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POLITICAL SCIENCE AND THE JURISTIC POINT OF VIEW

GEORGE H. SABINE

Ohio State University

In the August, 1926, number of this journal, Professor W. W. Willoughby presented some conclusions regarding the conception of sovereignty and the range of its applicability in political science, together with some interesting suggestions for the clarification of political theory. His article is devoted primarily to an exposition and criticism of the juristic theories of Professor H. Krabbe, and the gist of his criticism is that Krabbe, in common with the translators of his *Modern Theory of the State* and with Duguit, fails to distinguish between ethical and legal validity. Krabbe's attack upon the conception of sovereignty is therefore due to a confusion: The legal supremacy which the analytical jurist attributes to the state for purely legal purposes is taken as including also an assertion of moral supremacy. Accordingly, the fact that a legally valid law may be criticized as opposed to moral sentiment or to public interest is turned into an objection against the view that the state, for juristic purposes, may be regarded as a legally sovereign will. Professor Willoughby implies that clarity can be introduced into the whole discussion simply by avoiding this confusion. The justice or utility of a law is a wholly proper question for the moralist, but it is quite irrelevant to the juristic problem, which concerns merely the legal competence of the agency enacting or enforcing the law. "We find in Krabbe, and also in his translators, ... that same mistaken idea which is to be

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discovered in Duguit, that an inquiry into the idealistic or utilitarian validity of law, as determined by its substantive provisions and purposes sought to be achieved by its enforcement, has a relevancy to, and that its conclusions can affect, the validity and usefulness of the purely formalistic concepts which the positive or analytic jurist employs."[1]

It is not my purpose in this article to defend Professor Krabbe or his translators against the charge of confusion. That is a question upon which readers of the book are entitled to judge for themselves. I wish rather to inquire whether Professor Willoughby's plan for introducing clarity into our thinking about sovereignty will remove the difficulties which many scholars, including Krabbe and Duguit, have felt respecting that concept, and whether the distinctions which he proposes afford a working basis upon which political science can proceed with its various tasks, juristic and other. It is my desire throughout to meet on its own ground Professor Willoughby's claim for "the validity and usefulness of the purely formalistic concepts which the positive or analytic jurist employs," so far as this can be done by one who believes that, as a point of view for political theory, these concepts are neither valid nor particularly useful. The question is, How useful are they, and why are they useful at all?

Before taking up the juristic point of view in particular, however, we may consider briefly Professor Willoughby's plan for clarifying political theory. The essence of this plan, if I have grasped his argument, is to keep clear and distinct a number of points of view from which it is possible to observe and explain political phenomena. "A state may be regarded from various points of view, and as thus variously regarded—sociologically, ethically, psychologically, or juristically—it may be differently defined and clothed with different essential attri-

[1] *American Political Science Review*, Vol. XX (1926), p. 510. On p. 522 the omission of a number of words has completely changed the meaning of a quotation from the translators' Introduction to Krabbe's book, though it does not appear that Professor Willoughby has mistaken the writers' meaning.

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butes."[2] The complex subject-matter of politics must be viewed from only one angle at a time, and the special obligation of the investigator is to remain faithful to the point of view which he has chosen to adopt. He may set up such definitions and explanatory conceptions as the subject-matter requires when seen from that point of view, and his scientific purpose is to formulate a set of propositions logically consistent with each other and in accord with the phenomena.

Professor Willoughby does not expand this view of methodology, but I presume it would follow that, if we were to examine two such sets of propositions—about the state, for example, as seen from two distinct points of view—we should find no statement in the one which was exactly identical with a statement in the other; for the point of view adopted would partly determine in each case all the propositions at which the scientist had arrived. It would follow also that no statement in one such set of propositions could be urged against a statement in the other set, because the two would be really irrelevant. They would belong, as logicians say, to different universes of discourse. The only valid and relevant objection against any proposition is that it is contradictory of some other proposition stated in terms of the same postulate or point of view.

Some such view of scientific procedure is not uncommon among students of logic. Probably it owed its currency in the first place to discoveries, such as the non-Euclidean geometries, which brought clearly to the attention of logicians the part that postulates play in determining the results of scientific investigation, and also the fact that postulates are to a considerable extent independent of logical compulsion. In a strictly formal view it is clear that postulates cannot be logically justified, since the deductions made presuppose the postulate and obviously what is assumed cannot be proved. It is possible, therefore, to regard postulates as acts of will rather than of intellect. The scientist freely chooses to reason upon a certain assumption, or, as Professor Willoughby says, to observe the

[2] *Ibid.*, p. 521.

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subject-matter from a certain point of view. He may, for example, adopt Euclid's axiom about parallel lines or some other; speaking strictly, there is nothing that can oblige him either way, and another investigator has an equal freedom of choice. In either case, of course, once he has elected to play the scientific game according to certain rules, he must keep strictly within the implications of those rules.

The chief advantage of this conception of scientific method is that it tends to engender self-consciousness about the making of assumptions and also to inculcate a belief in the radical sinfulness of confusion, both scientific qualities of the greatest value. But the degree of clarity that can be got in this way depends upon our ability to mark off precisely the points of view we mean to distinguish. When Professor Willoughby proposes to set off an ethical theory of the state, a sociological theory, a juristic theory, and so on, he seems to imply that we already know what each of these points of view includes; for surely nothing would be gained by referring one unknown to another. In fact, however, this is pure supposition, for the proper points of view to be adopted in ethics, sociology, and scientific jurisprudence are not notably clearer than for political science itself. So long as moralists do not agree on a definition of ethical value—indeed, do not even agree that it can be defined—how is the political scientist to fix upon an ethical point of view with the assurance that he can persuade other political scientists, or anyone else, to agree with him? And the case is not so far different in sociology and jurisprudence. The advantage of making distinctions depends altogether on how clearly we know what we are distinguishing. Professor Willoughby's plan really amounts to handing on a mass of difficulties to some one at least as ill-qualified as the political scientist to deal with them.

The most that can possibly be said for the rigid distinction of points of view in political science is that it perhaps affords a provisional way of carrying on different lines of work. But it can in no case dispense with the need for a progressive clarifying of the points of view provisionally adopted, and in the end

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it is nearly unbelievable that this process should not involve the synthesis and relating of points of view quite as much as distinguishing them. A generation ago it might have been worth while to distinguish a physical and a chemical view of matter, but certainly no scientist today would find such a distinction serviceable. In the same way, it would be surprising, to say the least, if the study of the state should remain a congeries of theories formed from distinct points of view with no contacts except identity of subject-matter. But if the political scientist merely postulates his points of view as distinct, so that results in one field are irrelevant to results in another, is he not virtually assuming that they are unrelated? This is clearly a very large assumption in itself and, so far as concerns the case in hand, it is precisely what would not be admitted by the jurists whom Professor Willoughby is criticizing. Rightly or wrongly, Duguit has started his study of constitutional law from a sociological principle, and Krabbe has based his theory of the state on the existence in a people of a certain *ethos* which includes morals and law as species of the same genus. Unquestionably, if these views rest only on confusion, as Professor Willoughby believes, they are wrong. But to start by postulating the different points of view as unrelated amounts to a refusal to experiment with the hypothesis that they may be related, which, on its face, is just as plausible as the contrary hypothesis.

So far, we have not questioned the notion that the scientist makes postulates or adopts a point of view by a sheer act of will. In truth, however, this is a very one-sided view of scientific procedure. The making of a postulate always has its roots somewhere in the history of the science to which it belongs. Even in geometry, certain difficulties connected with Euclid's axiom had been canvassed for centuries before a non-Euclidean postulate finally emerged as the foundation for a new system of geometry. A new point of view is taken up because it holds out the prospect of aid in the solution of problems which the inner growth of the science has made apparent. In practice, therefore, postulation is guided by some conjecture, at least, as to the probable utility or fruitfulness of the point of view

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adopted. As a rule, such a judgment of scientific utility means some form of analogical inference by which a fruitful conception is taken from one field of study and adapted to an allied field. And once a point of view has been suggested and applied, it is continually tested by its results. This test of scientific serviceableness is admittedly vague, as compared with the test of logical consistency, but it is none the less real. In the actual course of scientific work a point of view is valued because it seems to open up new and promising lines of investigation and to give hope of progress in the endless task of making phenomena intelligible.

There is no good reason, therefore, why a juristic theory of the state should be set up merely by postulation. On the contrary, there is every reason to ask what precisely constitutes "the validity and usefulness of the purely formalistic concepts which the positive or analytic jurist employs." We may reasonably expect to find that the point of view was in some sense forced upon political science by something in the nature of the facts studied, or even that it was suggested in the first place by analogy with prevailing ideas of what constituted good scientific method. In fact, it can be shown, as I believe, that the fruitfulness of the concepts to which Professor Willoughby refers was due solely to historical circumstances which gave a certain direction to political evolution in a limited period of modern times. If this be true, the suggestion that these formal conceptions can be merely postulated for a whole division of political investigation gives them a false appearance of universality to which they are not entitled. Let us examine, then, the juristic theory of the state, as Professor Willoughby describes it, in order to see whether it was a product of logical necessity or of historical circumstance.

A juristic theory of the state, as Professor Willoughby conceives it, has to do only with the legal frame-work or constitution of the state, and in so far as it is a formal theory, it is concerned solely with the legal competence of the organs of government existing by virtue of the constitution. A formal juristic theory abstracts from all substantive provisions of the law their actual

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mode of working, their utility, their justice, their historical origin, and their relation to any class of social, political, or economic phenomena. In other words, the study concentrates upon a single type of value, namely, legal validity or competence, disregarding considerations of fact as well as values other than legal. The only question raised with reference to any agency of government is the kind and degree and limits of its legal power. There is no need to insist upon the exceedingly narrow limits of such an investigation in the whole range of political study, since this limitation is precisely the point which Professor Willoughby urges. We shall see later that to abstract the form of law from the factual content of the situations in which it operates must seriously cripple our understanding of the law itself, but this point may be postponed for the present.

We may grant at once to the analytic jurist that legal competence is a fact, forming one element of any complex of political phenomena, and also that it is useful for many purposes to know what a governing body may legally do. It is true also that what such a body can legally do is often different from what it ought to do as a matter of good policy or of justice, or from what it will in fact do in a given case. Professor Willoughby is absolutely right in saying that these different questions ought not to be confused. The distinctions are useful, and knowledge on any or all of the different points may be useful in analyzing a political or legal situation. The critic of sovereignty certainly has no right to obscure any distinction which is in fact a real part of the phenomena he proposes to study.

But a mere description of legal power as it actually exists does not in itself constitute a formal juristic theory of the state. Such a theory goes on to assume that the state is a single entity and that, when we have isolated its legal constitution, we have a formally logical or consistent system of powers which fully defines the competence of each organ in relation to that of every other organ. The formalistic concepts of such a juristic system are largely devoted to helping out this assumption of formal consistency. The question is not whether there is such a thing as legal competence, a fact which I presume every one would

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admit, but whether the understanding of the law demands this process of formalizing competences, and whether the formal consistency of such a system indicates the scientific validity of the method. The points which I wish to make are that formal consistency, in so far as this is actually found in the law and is not merely postulated by the analytic jurist, is easily intelligible as a result of certain utilities and of historical circumstances, and that the postulation of complete formal consistency has no scientific validity whatever but is the remnant of a methodological analogy long out of date. Professor Willoughby refers mainly to two propositions as elements of a juristic theory: that the state is a juristic system, and that, as so considered, it must be conceived to act solely through law. Both propositions require our consideration.

The theory of legal sovereignty can be derived by a very simple logical process, if we unite the notion of a delegation of authority with the assumption that such delegations must be systematic or not mutually obstructive. There is, however, no logical necessity that they should be so united, and it can easily be shown that they are often not united in bodies of constitutional law. The notion of delegation has obviously a wide range of application, and some traces of it are doubtless to be found in any constitution that is at all complex. Perhaps the simplest case is that in which one body is conceived to stand in the place of another for some special purpose. This, for example, appears to have been the theory of the large popular juries in the Athenian constitution.[3] Being chosen by lot, and being of considerable size, they could conveniently be treated by a simple fiction as if they were identical with the whole people for judicial purposes. The authority of the people appears whole and complete in every jury, subject to the condition, of course, that the jury can only express a judgment in the case before it. Subject to this condition, however, it might in effect

[3] That this was the ancient view seems clear from the fact that the orators frequently addressed the jury as "Athenians," and also that the decision of the court was conceived as equally binding with a vote of the ecclesia. See Busolt, *Griechische Staatskunde* (1926), pp. 1150 ff.

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reverse a vote of the ecclesia itself, if the case before it involved the charge of securing the passage of an unconstitutional statute.[4] A very similar conception of delegation is to be found in the Greek leagues, where a league government, evidently modeled on the city-state itself, is set up to control the foreign affairs of the member states. The league supersedes the members in the field of foreign relations, and the finality of its decisions is asserted in the most positive terms; but, characteristically, it is supposed to leave the self-government and independence of the city-state quite untouched.[5] The inclusion of sovereign states in a League of Nations is sufficiently similar to suggest that the juristic idea of the Greek leagues is not too primitive or too remote to be worth attention.

If it be assumed, however, that the competence of the different organs is to be systematically defined and guaranteed against conflict, the simplest assumption is that the various lines of derivation lead up to a single delegating source, and that the authority of this first source is underived. The practical reasons behind such a conception are obvious, for in any workable system conflicts of authority must be kept within fairly narrow limits. A unified system of delegated authority is one kind of rather simple organization chart. How vividly conscious men will be of the need for such clear-cut organization, and for translating it into constitutional law, will depend largely upon the magnitude of the dangers that attend conflicts of authority. Had the Greek leagues not been overwhelmed by external interference, it is conceivable that the dangers of particularism might have generated in time a far more highly centralized type of constitution, just as the class struggles of the later republican period at Rome generated in the principate the nearest ancient analogue of the modern sovereign state. It is the period of the

[4] For a description of this form of action see Vinogradoff, *Historical Jurisprudence*, Vol. II (1922), pp. 138 ff.; for other passages see the index, *s.v. graphe paranomon*.

[5] J. A. O. Larsen, "Representative Government in the Panhellenic Leagues," *Classical Philology*, Vol. XX (1925), pp. 313 ff.; Vol. XXI (1926), pp. 52 ff., and especially pp. 68 ff.

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sixteenth and seventeenth centuries, however, with the threat of destruction which sectarian religious war brought to European civilization, that made the conflict of authorities a matter of life and death. At the same time, powerful economic motives, connected with the growth of more extended trade, contributed to the closer centralization of the state. The rise of the modern absolute monarchies is a twice-told historical tale. Here we have the historical process that made the political theory of sovereignty fruitful and applicable. The theory of sovereignty is a modern theory, not because it is the modern discovery of an eternal fact, but because the fact itself which it describes is the creation of political evolution in western Europe in the sixteenth and seventeenth centuries.

The political theorists of the period, casting about for conceptions that would clarify the imperative ideals of their time, sought to fructify their philosophy by an analogy with the most progressive branches of science, or at all events with what men believed at that time to be the secret of scientific success. It would be hard to exaggerate the importance in seventeenth-century philosophy of the prevailing admiration for geometry, an admiration which influenced not least men who had little competence in the mathematical sciences. The key to scientific success was supposed to lie in the use of clear and distinct ideas. And the clue to clearness and distinctness was supposed to be, first, an analysis which would yield conceptions so simple and self-evident that they bore the marks of unquestionable necessity upon their face and, second, a process of deductive synthesis in which each step was guaranteed by a simplicity and self-evidence equal to that of the elements themselves. It is the perfect statement of such a scientific process in his *Discours de la méthode* that mainly entitles Descartes to be counted the typical philosopher of the period and made him the spokesman of rationalism and enlightenment for a century after his death.

The same ideas of method dominate the political philosophy of the sovereign state. By analyzing political authority, the philosopher first brings to light the conceptions of sovereign

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and subject, and then from the axiom of sovereignty he develops the necessary powers which the sovereign must have. In theory, the process is strictly formal and is supposed to be validated by the logical principle of contradiction; a conception of sovereignty accompanied by a denial of any of its necessary powers is regarded as equivalent to asserting sovereignty and denying it at the same time. This is essentially the conception of Bodin's chapter on the *propria jura majestatis*,[6] and still more clearly the conception of Hobbes' closely related treatment of the powers of the sovereign.[7] The method is not empirical but *a priori*. It moves on the plane of what Professor Willoughby calls "formalistic concepts;" its contempt for fact is as serene as that which made Kant declare that ethics would be quite unaffected if no human being had ever performed a moral act. The validity of the concepts employed was not supposed to rest upon their usefulness or their agreement with fact; they were valid *per se* because they were inherently reasonable. The seventeenth-century thinker assumed that phenomena were reasonable and that hence the reasonable must be useful—an act of faith which was easier in the seventeenth century than in the twentieth. The fact is that the conception of a formal juristic theory of the state was the child of seventeenth-century methodology, as the centralized state to which it applied was the child of sixteenth-century religious strife.

This conclusion may be enforced indirectly if we reflect that the absence of a formal system of legal competences is normal in constitutions other than those of modern Europe, subject in practice, of course, to the fact that a state cannot be too disorganized and yet continue to function. I have already mentioned the notion of delegated authority to be found in the

[6] *De republica*, Lib. I, cap. x. It is true that Bodin wrote before the method described had crystallized. The author of the *Methodus ad facilem historiarum cognitionem* was certainly not exclusively a rationalist in jurisprudence, nor is the author of the *Démonomanie* a representative of the enlightenment. On the other hand, his extraordinary treatment of dogmatic theology in the *Colloquium heptaplomeres* is quite in the spirit of the eighteenth century. See Ad. Franck, *Réformateurs et publicistes de l'Europe, moyen age, renaissance*, pp. 395 ff.

[7] *Leviathan*, Ch. 18.

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Athenian jury system and the Greek leagues. Another and somewhat similar example may be found in the republican constitution of Rome, where any magistrate was legally competent to bar the action of any other magistrate having an equal or inferior authority.[8] The constitutional principle of rule by majority is thoroughly contrary to a formally consistent system of competences; it was workable in practice mainly because the exercise of magisterial powers was hedged about by custom, and because the Senate exercised an actual supervision over magistrates much beyond the strictly legal competence of that body. Most anomalous of all, when viewed in the light of formalistic concepts, was the power of veto enjoyed by the tribunes of the plebs. For these officers were not in legal theory magistrates at all, but the representatives only of a class. Yet as a means for the protection of that class they became legally competent to annul the decrees of magistrates, to prevent the assembly from holding elections, or to bar the proposal of a law. Indeed, if a tribune were sufficiently determined, he could utterly paralyze all the organs of government.[9]

The assumption of unity in these conflicting legal powers is clearly out of place. The Roman theory, that ultimate power resided in the people, was not a juristic theory at all. For, aside from the fact that the assemblies did not exercise any such ultimate authority, they did not possess it as a matter of legal competence; it was quite impossible for them to meet or to function except with the aid of a magistrate. The whole folk or people was a community conceived as including both gods and men, and the power of the magistrate depended upon the fact that he alone, through the auspices, had access to the gods. The magistrate's *imperium* was inseparable from the *auspicium*; as Greenidge says, they were the human and divine sides of the

[8] See Bouché-Leclercq, *Manuel des institutions romaines* (1886), pp. 40 ff. Greenidge, *Roman Public Life* (1901), pp. 146 ff.

[9] As Tiberius Gracchus did in 133 B.C. in an effort to force the passage of his agrarian law, which another tribune, Octavius, had prevented the assembly from voting upon; see Greenidge, *History of Rome*, Vol. I (1904), pp. 121 ff. On the constitutional nature of the powers exercised by Gracchus, see Greenidge, *Roman Public Life* (1901), pp. 172 ff.

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same power.[10] Consequently, the magistrate's authority was a power against the people—that is, the human part of the community—at least as much as a power derived from them. At a later and more rationalistic stage the Roman lawyers could preserve the traditional principle as a juristic theory only by coupling it with the fiction of an absolute transfer of power from the people to the *princeps*.

As a mere matter of description, there is no great difficulty, apart from the complexity of the facts, in giving an account of the legal powers of the Roman magistrates, and with a due exercise of historical imagination, no insuperable difficulty in understanding how a practical and sensible people might accept their contradictory relations as reasonable and right. The trouble comes if the analytic jurist insists that Roman notions must square with his own formalistic conceptions, which have been constructed to fit modern states. The truth is that until modern times no state was a fit subject for a process of abstraction that would set its legal framework apart from all religious and moral conceptions for purposes of purely juristic analysis. Still less was it formally legal in the sense that its organs made a well-defined system of delegated authorities leading up to a central head.

This brings us to the second of Professor Willoughby's characterizations of a juristic theory, viz., that for such a theory the state is necessarily conceived as exclusively a legal entity. For a juristic theory, therefore, every state is a *Rechtsstaat*. "When it is analyzed by the jurist solely from the legal point of view, it is necessarily considered as a *Rechtsstaat*, that is, as living and having its being in law and functioning solely through law."[11] This necessity Professor Willoughby seems to regard purely as a logical implication of the point of view, rather than as a real attribute of a particular type of state. The juristic theory postulates that a state must have a legal organization sufficiently well organized and sufficiently independent of its

[10] *Op. cit.*, p. 162. See also Fowler, *Religious Experience of the Roman People* (1911), p. 301.

[11] *Loc. cit.*, p. 521.

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other aspects to be abstracted and treated as a living and functioning organism by itself.

It must surely be the case, however, that the fruitfulness of this postulate depends less upon its inherent self-evidence than upon its agreement with the facts of modern European political history. The conception of a *Rechtsstaat* is significant, not because only the legal framework of the state is left when everything else is abstracted, but because the state has come to have a legal constitution such that all authority is exercised in the name of law. Let us think for a moment of any feudal state, a state in which the sovereign's power of enactment is limited at every turn by the exemptions and vested interests of privileged individuals and classes, in which offices of state are occupied as if they were private property, and in which even the sovereign's power is less clearly a public authority than an incident of the ownership of land. Would any process of abstraction be likely to yield the jurist a conception which he could reasonably term a *Rechtsstaat*? Jean Bodin had a much clearer perception of the meaning of the conception which he did so much to introduce into political theory. After laying down the principle that it is the chief function of sovereignty *universis ac singulis civibus legem dicere*, he adds, "The latter words [*singulis civibus*] refer to *privilegia*, which pertain to the princes who guide the ship of state with their law. . . . . If anyone objects that magistrates themselves often give dispensations from the law and that the Senate at Rome very frequently did this, I reply in the words of Papinian, 'We should give heed not to what is done at Rome but to what ought to be done'."[12] In short, for the sake of an orderly juristic system, immunities and privileges need to be legalized. Bodin was close enough to the process by which something of the sort was being realized to know that facts need not correspond to his principle. The implication was important largely because it might not be true in fact.

[12] *De republica*, Lib. I, cap. x. I have quoted from a Latin edition of 1622, p. 241.

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Let us imagine, again, a state in which the process of centralization contemplated by Bodin has been carried through and in which a sovereign has arisen who makes law for his subjects both collectively and severally. But let us imagine, further, that this sovereign exercises his power, as Bodin says, *arbitrio suo*, or with a practically unlimited prerogative. Should we in that case have a state "living and having its being in law and functioning solely through law?" Had James I actually made good the claims for his prerogative advanced in his struggle with Coke,[13] it is hard to believe that juristic theory would ever have conceived the crown merely as an organ of the sovereign or the sovereign as acting exclusively through law.

The conception of a *Rechtsstaat* certainly depends upon historical conditions, though it is not easy to specify with certainty what those conditions are.[14] Perhaps the most necessary is the relatively frequent occurrence of legislation, which in turn will presuppose a state of relatively rapid change in social and economic conditions. It is only where legislation takes place as a matter of course that the enacting of law comes to be regarded as the typical function of the state, or the law itself comes to be clearly distinguished from religion and morals. But frequent enactment is scarcely possible without the development of an organ of government prevailingly devoted to this function. Professor McIlwain has shown that even in the case of Parliament a clear conception of legislation as its chief function did not gain currency in England until the seventeenth century.[15] Finally, the conception of a state functioning solely through law seems to require that the legislative organ should have gained at least a fair degree of ascendancy over local and customary law, and that the discretion and prerogative of executive officers should have been delimited with a considerable degree of exactness through some sort of enactment. In short, the

[13] See, for example, his address to the judges in Star Chamber (1616), *Works*, ed. McIlwain (1918), pp. 332 ff.

[14] See Lord Acton, *Lectures on Modern History* (1921), pp. 302 ff.

[15] *The High Court of Parliament* (1910), Ch. 4.

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notion that the state functions only by law would be meaningless unless the whole machinery of the state had become more or less consciously legalized. It is certainly not true that all government must be of this type. Perhaps no government is wholly so, but only in a brief period of modern history has the state been preponderantly a legal institution. It is no doubt justifiable for a jurist to concentrate his attention upon the legal aspect of such institutions as exist, as historical jurists have done; but it is not justifiable to postulate that these institutions must fulfill the formal requirements that belong to a different period.

To discuss on its merits the whole vexed question of analytical and historical jurisprudence is obviously out of the question. It is certainly true, however, that any suggestion looking toward an exclusively formal analysis of the law is to be viewed with suspicion. For surely a subject like law can never be divorced from historical circumstance, from the eternal shifting and changing of institutions. The ideal of formal systematization commits a juristic theory inevitably to the study of a cross-section of constitutional law taken at some single stage of development; for any serious shift of political authority amounts to an alienation of sovereignty, which is bound to dislocate the formal meaning of the conceptions used, and so lead to a breach of formal consistency. No one has ever succeeded in making formal concepts other than timeless, and timeless categories in a subject so essentially changing as law and politics need to be used with the greatest caution if they are not actually to falsify the subject-matter studied. After all, as Dean Pound has often pointed out, legal reasoning itself has frequently been affected by other than formal conceptions of legality—by conceptions of justice, of the ends to be obtained through law and of its proper function, to say nothing of extra-legal considerations of a factual or utilitarian sort. It is hard to see why a political scientist should be doomed to confusion merely because he refuses to make his view of the law more legal than that of the lawyers.

If the analytic jurist must face the fact that his formal conceptions have not fitted the past, he must also face the possi-

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bility that they may cease to fit the present. For it may easily happen that political phenomena will slip through the net of formal conceptions in which he has sought to snare them. Indeed, it might be argued *a priori* that formal analysis, in a subject like constitutional law, will have to be done over for every generation. If such an argument were purely *a priori*, no doubt the jurist might leave posterity to look out for itself. In fact, however, it is worth considering whether the conceptions traditionally used by jurists in analyzing the state, as they came into being to fit a particular stage of political evolution, are not now less satisfactory than they were a generation ago because political evolution is leaving them behind.

Professor Willoughby himself remarks that the analytical jurist has been compelled to recognize a gap between municipal and international law,[16] and indeed it is obvious that the formal conceptions in question can have little fruitfulness in a field where there is certainly no sovereign law-giver and where the fiction of equality between the so-called sovereign parties to agreements has been given up.[17] It is hardly necessary to enlarge upon the magnitude of this exception at the present time, for no one doubts that the juristic experiments now going on in the field of international relations are among the most interesting and significant phenomena that the political scientist has to study. But what is the student to do? Is it either wise or scientific to insist that there is no international law because formal conceptions such as sovereignty do not apply? This surely would be to hold fast to a word at the expense of losing the substance. Certainly the League of Nations has attributes to which we can hardly deny the adjective juristic, just as we can hardly deny the name law to much that was called so in the past, even though it owed nothing to the mandate of a sovereign. No one will deny that the examination of questions concerning legal competence may be scientifically fruitful when applied to the

[16] *Loc. cit.*, p. 517.

[17] See Professor James W. Garner's presidential address, "Limitations on National Sovereignty in International Law," *American Political Science Review*, Vol. XIX (1925), pp. 1 ff.

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various organs of the League. Is such inquiry to be met with the objection that the formal conceptions employed by analytic jurists do not fit the case? If so, surely the reasonable answer is that the analysis must still be made, if not with the conceptions in question, then with others which are suitable. Questions concerning the legal competence of international bodies need not be crowded into the four corners of the traditional conceptions by which jurists have been accustomed to systematize constitutional law—a fact which raises the suspicion that such formal conceptions are perhaps less useful than has been supposed for the purpose of presenting the legal competence of organs in the state. In short, sovereignty might turn out not to be an indispensable tool even of juristic analysis.

For understanding the legal relations of organs within the modern state it is true that the conception of sovereignty has had utility, though hardly scientific necessity. Even here, however, it seems as if there were likely to develop shades of competence, or possibly what might be called quasi-competence, which would be difficult to classify in terms of the usual notion of delegation. Some such process of evolution seems to be required in consequence of the great multiplicity of tasks imposed on modern states and the great technical difficulties of the problems involved. We may perhaps imagine the case of a governing organ which originates in the first place by an undoubted delegation of authority, such, for example, as the Interstate Commerce Commission or the Federal Reserve Board. On a strictly legal analysis, there is no doubt that Congress is competent to sweep these bodies out of existence, as it originally created them, or to modify their powers to any extent. It seems certain, however, that the longer such bodies function and the more their functioning becomes interwoven with the economic life of the community, the less likely a legislative body will be to interfere with them in any drastic fashion. From the point of view of the analytic jurist, this abstention is the result of policy, or perhaps of actual rather than legal disability, and of course the jurist has never claimed that the sovereign either can or will do everything that he is legally competent to do. The

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question, however, is whether policy or an actual disability will not tend with custom to get in some sense a color of law. Examples of such an evolution will occur to everyone. Would it, for instance, greatly change even the legal status of the electoral college if the constitution were amended to require an elector to vote for the candidate under whose name he had been chosen?

However far the process of legal systematization may go, it is hard to believe that the effects of custom upon the law can ever be eliminated, and certainly the nuances of binding force in customary arrangements are not easy to reflect in formal juristic concepts. It is possible, therefore, to imagine a process of evolution by which a state might be effectively decentralized, even though it were impossible to assign a precise point in its history where a break in legal continuity took place. Formal concepts would merely become progressively inapplicable in describing the actual competence, habitually recognized as legal, exercised by its organs. At all events, many competent observers have believed that they could discern such a tendency to decentralize in modern political institutions, and if they are right it seems certain that in the end analytical jurisprudence must modify its formal concepts to accord with the results of such a change.

If we may take yet another imaginary example—but one for which any historian can easily supply parallels—it is possible to conceive a process by which an institution quite outside the organs of government might attain such strength and permanence that government would be forced to take it into partnership. An advisory body[18] like the German Economic Council, or even a purely private body such as a federation of labor unions, might conceivably exert influence enough to force a government to treat with it on terms approaching equality. Here again the compulsion would be one of policy, and not what the jurist would recognize as legal necessity. In time, perhaps, such a body might obtain a wholly valid legal competence

[18] On the astonishing growth of such bodies in British government, see Professor J. A. Fairlie's article in the *American Political Science Review*, Vol. XX (1926), pp. 812 ff.

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commensurate with its actual power; it might become a true organ of government by every test that the jurist would care to apply. Whatever lay between these two extremes would be merely irrelevant for purposes of a formal analysis of the state. But is it likely that even the analytical jurist would adhere so strictly to his formal conceptions? When a code enacts what has long been established in practice, the jurist is as likely as anyone else to chronicle the fact, and indeed he would usually be quite at a loss to explain how the provisions enacted really work unless he took account of their gradual formulation. But in the law, as everywhere else, gradual formulation and strict formalism are radically inconsistent; unfortunately for the analytical jurist, moreover, formulation is more truly the way of life than formalism. Even in an age when legislation takes place wholesale, it would be rash to assume that the profoundest and most far-reaching changes in the law must necessarily occur by enactment, or that institutions may not gradually get a quasi-legal status which in turn is only gradually transformed, if ever, into full formal legality. If this happens, it seems imperative that the jurist should allow enough elasticity in his conceptions not to obscure the facts.

As we have seen, it is the purpose of the analytic jurist to abstract wholly from the factual situations in which the law operates, and from the actual ways in which it operates, the results that it produces and the extra-legal conditions upon which these results depend. A layman may perhaps be allowed to express some scepticism as to whether even the most consistent analyst can really sustain so high a flight of abstraction, or whether his view of the law would be very intelligible if he did so. The analytic jurist himself would agree, I assume, that the operation of the law—its efficacy as a controlling force in human relationships—always depends more or less upon conditions that are wholly extra-legal. The security of many ordinary transactions depends in a very slight degree upon the formal arrangements by which such security is guaranteed. The English pharmacopœia, for example, is statutory; the United States pharmacopœia is the result purely of coöperation

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between physicians and manufacturing chemists. Yet an Englishman probably has no greater security against the dispensing of impure drugs than an American. The really effective factor in both cases is doubtless the standard specifications which actually control the practices of the profession. Without these the law would be powerless, and with them the precise legal arrangements by which they are enforced become almost an academic question, at least so far as results are concerned. A jurist doubtless needs to know what the arrangements are, but unless he is interested solely in law as it exists in books, and not at all in law as it is in action, he can scarcely neglect the extra-legal conditions which determine what the law is able to do. What the layman suspects is that the jurist does not really succeed in carrying his abstraction through, but contents himself with a conventional picture of the facts, which is always more or less out of date and inexact. Abstraction of this sort seems not so much scientific as academic.

It is an undeniable fact that profound changes in the working of the law can be effected by extra-legal means quite as much as by legislation and judicial interpretation, as everyone knows who has interested himself in the relations of the law to the actual operations of business and industry. A good illustration may be found in the indirect effects upon the operation of law produced by such work as is now being done on a large scale by the American Engineering Standards Committee.[19] The making of standard specifications for Portland cement or for the "tolerance" permissible in the diameter of steel shafting does not directly affect any laws governing the manufacture of these articles or the law of contract under which purchases are made. But by stating accurately the recognized practices of the trade, such specifications tend to clarify every contract made and to make effective the security which the law of contract is commonly supposed to aim at. Similarly, the formulating of

[19] For a general account of this work see the year-book of the committee for 1927. See also the articles by its secretary, Mr. P. G. Agnew: "How Business is Policing Itself," *Nation's Business*, December, 1925; "A Step Toward Industrial Self-Government," *New Republic*, Vol. XLVI (1926), p. 92.

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safety codes for electric wiring, or for the use of grinding-wheels, does not directly enact law, but it gives a degree of precision to the definition of good engineering practice which an ordinance-making body can at once utilize to make the law effective. At the point where legal enactment articulates with the actual processes of industry and of life the jurist inevitably comes face to face with ideas of accepted good practice as embodied in the customs of trade and manufacture and human relationship. Such ideas are indeed largely ethical or sociological or economic, as well as scientific and technological, but they do affect the law, and in many cases a better definition of them is undoubtedly more efficacious in extending legal control into actual human relationships than the prevailing methods of legislation. Professor Willoughby would agree, I believe, that law is an element in a total civilization which is as truly ethical and economic and technological as it is legal. Must he not expect, then, that a legal system abstracted from such a context will be full of raw edges and logical imperfections?

It is difficult to argue for the recognition of logical imperfection or to defend elasticity in conception without seeming to offer an excuse for confusion and ambiguity. Certainly this is not my purpose, for confusion is never defensible. I do not believe, however, that in the end the clarity of political theory can be achieved by Professor Willoughby's plan for dividing it into water-tight compartments. At best, such a plan is provisional; it merely postpones the time when the relations, if any, between its various parts will have to be considered. Worse still, it tends to exempt points of view from criticism with respect to their actual meaning and scientific fruitfulness. The points of view in use in a science at any given time are largely a matter of tradition, and therefore a perfectly fit subject for scepticism. With respect to juristic conceptions, I do not believe that, in the long run and in their actual significance for political phenomena, they can be distinguished from moral and utilitarian conceptions with anything like the finality and sharpness that Professor Willoughby seems to assume. And in respect to the formal juristic conception of the state, the body of concepts

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which jurists have been accustomed to use in systematizing constitutional law, I doubt exceedingly whether these can be said to constitute a generally significant point of view at all. The actual legal competence of an organ of government is a useful fact for many purposes, and this fact certainly ought not to be confused with moral, social, or economic facts. But I doubt whether the fact of legal competence really depends in any important way upon the concepts by which analytic jurists have tried to erect competence into a formal system. Historical jurists usually find no insuperable difficulty in describing competence where the formal conceptions manifestly do not apply. In other words, the fruitfulness of formal concepts as applied to modern governments is due purely to an historical mode of development and not to the logical character of the conceptions themselves. They do more or less describe a phase of political development which was undeniably of first-rate importance. Any logical necessity or self-evidence which they may seem to have they owe to a tradition of scientific methodology which goes back to the formative stage of the period in which they belong. Finally, while recognizing all the uncertainty that must attach to a mere estimate of tendencies, I am inclined to believe that the traditional categories of juristic formalism are likely to prove too simple for even the juristic developments that governments now seem to be undergoing.

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BENTHAM ON THE THEORY OF SECOND CHAMBERS

LEWIS ROCKOW

When the problem of second chambers is discussed, we frequently find that interest is confined to the subsidiary question of technique, omitting the prior question, "Why have a second chamber?" It is in the main assumed that second chambers are universally valid, and therefore attention is centered on the varied methods of selection and the extent of functions. If the primary question is raised at all, it is invariably answered by an appeal to experience. It is claimed that almost all modern governments have for a considerable time had bicameral legislatures, and that it is hazardous to disregard a practice that is so nearly universal. Seldom is an attempt made to go beyond experience and to analyze critically this admittedly wide practice. In fact, a bicameral legislature is generally held to be an unassailable and eternal verity, one of the few axioms of political science.

Nevertheless, among the more systematic writers on political science the validity of the bicameral theory is far from unanimously supported. Even a hasty reference to the history of political ideas shows recurrent dissent. Thus, during the period of democratic ferment inaugurated by the French and American revolutions we find unmistakable opposition. To mention some examples, Samuel Adams, Paine, Turgot, Sieyès, and Condorcet were in favor of the unicameral form.[1] The basis of their hostility is well summarized in the famous dilemma of Sieyès. Sieyès has indeed indicated the broad outlines of the objections; and a succeeding century of bicameral experience shows how difficult it is to escape from his vexatious alternatives. To reconcile faith in democracy with the assumption of the value of an effective check is assuredly not an enviable task. At any rate, for our present purpose suffice it to say that bicameralism has frequently been rejected.

[1] H. J. Laski, *The Problem of a Second Chamber*, Fabian Tract No. 213, p. 12.

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In no writer, perhaps, do we find as vehement a defense of unicameralism as in Bentham. After the July Revolution in France, when the reconstruction of the French government along more democratic lines was being discussed, the aged Lafayette asked Bentham's advice on the question: "In France, shall we, or shall we not, have a chamber of peers?" Bentham's relations with France had been of long standing. Forty years before, during the early stages of the first revolution, he considered France a suitable field for experiments in the organization of government on the principle of utility. In 1792 the French government, in recognition of his humanitarian zeal, made him a citizen of France. Bentham enjoyed an international reputation, and freely volunteered his services to any government which would aim at establishing legal and political organization on the sacred principle of the "greatest happiness of the greatest number." It is therefore not strange that Lafayette should have sought Bentham's advice. Bentham's reply to the query is his most succinct statement of his theory of the second chamber, although some aspects of the question were briefly examined also in some of his other works.[2]

Bentham's objections to a second chamber can easily be stated. Since the end of government is "the greatest happiness of the greatest number," a legislative assembly, he thought, should be based virtually on universal suffrage. Only then will the aim of legislation be the advancement of the general interest. For a second assembly, in addition to the popular house, there was, in his eyes, no justification; for if a second chamber represents the general interest, it is useless; and if

[2] *Jeremy Bentham to his Fellow-Citizens of France on Houses of Peers and Senates*, 1830. A collected edition of the works of Bentham was published in 1843 in eleven volumes under the supervision of Bentham's literary executor, John Bowring. All reference to the theory of Bentham in this paper is made to this edition. For discussion of Bentham and his followers, see Leslie Stephen's *The English Utilitarians*, 3 vols., and Éli Halévy's *La Formation du radicalisme philosophique, 3 tom.* On the history of the period see Éli Halévy's *Histoire du peuple anglais au XIX^e siècle.* Mr. and Mrs. Hammond's *The Village Laborer, The Skilled Laborer, The Town Laborer,* and *The Rise of Modern Industry* are also valuable.

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it represents only a particular interest, it is mischievous. He recognized no special superiority in a bicameral legislature; on the other hand, the mere existence of two chambers would give rise to endless complications. A detailed analysis of the arguments by which he reaches his conclusions is of value, for they are as acute a discussion of the subject as is extant in political literature. The problem, furthermore, is as pertinent now as it was in Bentham's day; for a century of experience has evolved less a solution than a challenge.[3]

Bentham generally had little respect for tradition. His attitude toward the bicameral practice was no exception. The existence of two chambers, he said, was due, not to rational analysis of their utility, but to prejudice, "authority-begotten and blind custom-begotten prejudice." In the case of England, their origin was due, not to considerations of general welfare, but to social stratification; in the case of other countries, their adoption was due to mere imitation of the English model. The government of England had been an "aristocracy-ridden monarchy," using its power on behalf of the aristocrats at the expense of the rest of the population. The existence of the bicameral legislature was due to the very fact that a small portion of the population was set aside for special favors. When the American colonies separated from England they followed the English example, for they recognized that the government of England, imperfect as it was, was nevertheless less predatory and oppressive than any other government. With the House of Lords they had no quarrel; their complaints were directed entirely against the monarchy; so they rejected the monarchy and retained a second chamber. The other countries followed suit because England and the United States were the best governed countries in the world. However, the merits of the English and American governments were not due to the bicameral method but in spite of it.

[3] For Bentham's discussion of this problem see *Works*, vol. II, pp. 307–308; vol. IV, pp. 419–450; vol. VIII, pp. 468–70; and vol. IX, pp. 114–117. The words or phrases of quoted material given in italics are as found in the original.

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Following the question of origin comes that of composition. At the time of Bentham there were two outstanding types of second chambers, the British House of Lords and the American Senate. A third possibility, brought to the attention of Bentham by the French constitutionalists of 1830, was a house of peers composed of members appointed by the king for life only. All of these methods, Bentham held, were obnoxious and inimical to the general interest. To establish a house of peers, whether hereditary or for life, was, he thought, tantamount to giving the implacable enemies of the people an opportunity to increase their depredations. Such a chamber sets in a position of power one small class of the population against the rest of the people. It gives the privileged class the power of exercising a veto on legislation directed to the general interest, even if the powers of the second chamber, like that of the British House of Lords, included only a negative check. The peers will use their influence to increase the expenditure of government in order to obtain sinecures for themselves and their dependents. To secure themselves in their exactions from the subject many, they will make legal redress inaccessible to the poor. Such a second chamber will bring the aristocracy into close alliance with the monarchy, and both will then be united against the remainder of the population. The aristocrats and their dependents will be eager for appointments to sinecures, while the king as the grand corrupter will use the appointments as a means to extort subservience. The peers will aim by honors and splendors at setting themselves apart from the rest of the people, while to the king the bestowal of honors will be a common form of corruption. To us it may appear that Bentham over-emphasized the evil of patronage and favoritism which the existence of a house of peers would involve. But we must remember that in his day the evil of patronage and "placemen" was serious; and against this form of corruption Bentham directed his vehement opposition. Even in our time, under changed conditions, we find that when, as for example in Canada and New Zealand, the members of the second chamber are appointed by the ex-

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ecutive, selections are generally made as party favors in the interest of party strategy. Nor is the vice of the bestowal of honors for party advantages purely historical.[4]

To the method of selection used in his day in choosing the members of the Senate of the United States, Bentham was just as vigorously opposed. The philosopher believed that the members of the legislative assembly should be in constant and immediate relation with their constituents. In order to make the members of the assembly feel their direct responsibility, he advocated annual elections. Hence to him the election of the members of the second chamber on the American plan would mean election by an insignificant portion of the total population, with the representatives only indirectly responsible to the bulk of the people. The senators, in fact, would be removed from immediate consciousness of responsibility, and there is, therefore, the danger that they would constitute a special interest opposed to the general interest. "Here, then," Bentham states, "is a sort of *aristocracy* organized: and in virtue of the double-stage principle, an aristocracy over which the members of the constitutive have no direct influence: it may, indeed, be said scarcely any influence at all."[5] It is evident that Bentham regards the Senate of the United States purely as a chamber established to revise the work of the first chamber. He does not mention that the Senate was also established to represent the federal principle, that is, to represent equally the component

[4] The recent books on the problem of second chambers are H. B. Lees-Smith, *Second Chambers in Theory and Practice* (London, 1923), and G. B. Roberts, *The Functions of an English Second Chamber* (London, 1926). More important than these books is the Bryce report on reform of the House of Lords and the discussions of the same problem in the British Parliament. The Bryce *Letter to the Prime Minister on the Reform of the Second Chamber* is Cd. 9038, 1918. For the debate in the House of Lords on the Government resolutions of July, 1922, see Parliamentary Debates (Lords), fifth series, vol. 51, cols. 524–572, 642–682, 783–815, 963–996, and vol. 52, cols. 261–288. On the proposals of the Government in June, 1927, see Parliamentary Debates (Lords), fifth series, vol. 67, cols. 755–802, 862–950, 952–1006; vol. 68, cols. 664–677; and Parliamentary Debates (Commons), fifth series, vol. 208, cols. 1285–1406. On Canada and New Zealand see Lees-Smith, pp. 46–89 and 119–135 respectively.

[5] *Works*, vol. IX, p. 116.

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units of the American federal government, to give security to the small states as against the large states. His failure to refer to this aspect may be explained by the fact that he was immediately concerned with the constitutions of England, France, and Spain, all unitary governments in which the second chamber could not represent the federal idea. It may further be suggested that in a federal government the necessity for the existence of two chambers is not so obvious as is commonly supposed, for the interests of the component units can be secured by means other than a second chamber, as, for example, by rigid constitutional guarantees. The existence, too, of political parties on a national scale has to a considerable extent lessened the rôle of the second chamber as the special protector of territorial units. This is actually the situation now in the United States, Canada, and Australia.[6] Bentham's criticism of the Senate of the United States as a representative assembly has indeed proved prophetic, for it was this very irresponsibility that finally, a century after he penned his strictures, forced a change in the method of selection.

A philosopher like Bentham who aimed at the immediate and direct responsibility of the legislators to the people would naturally oppose long tenure of office, whether for life or for six years, of the members of the second chamber. In fact, in the long tenure of office which was the rule in his day he saw another objection to the whole bicameral principle. The security of a long term, he held, will tend to make the members still more independent of the people, and hence, perhaps, neglectful of the general interest. It will mean that the inefficient and corrupt will stay in office long, for it will be impossible to remove them immediately. It will also encourage the use of corruption as a means of attaining office, for the temptations will be great. If there is value in a longer experience in office, then it should be the rule in the first chamber not in the second. The first chamber carries a heavier responsibility and a long term will be more valuable there. There is, however, no special

[6] On Canada and Australia, see Lees-Smith, pp. 46–119, and Roberts, pp. 137–167.

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need for a long term in the first chamber, for the people will continue in office those who have shown themselves deserving. Again, if the term is for life there is no inducement to deepen experience, for without incentive no effort will be spent. The conclusion, therefore, is that the long term of the members of the second chamber is indefensible.

As we have seen, Bentham finds the members of the second chamber to be, according to different methods of selection, either hereditary peers, or peers holding office for life, or senators elected by local legislatures, obviously because these were the methods most prevalent in his day. He does not discuss the possibility of one chamber electing the other, as is the present practice in Norway, and as the Bryce commission suggested for the bulk of the membership of a reformed House of Lords.[7] He does mention his objection to a second chamber even when it is selected on a principle which will secure the representation of the general interest in it as well as in the first chamber. He does not, however, explore the various methods of such selection. He does not, for example, note the possibility of electing directly the members of the upper house in electoral districts different from those which return the members of the lower house, or by an electorate with special qualifications. He would, however, oppose a second chamber, no matter how constituted, no matter what powers it might possess, or in what position it might stand in relation to the other chamber. A second chamber he regarded as "needless, useless, worse than useless—that is to say, purely maleficent—such if I mistake not, will be seen to be every body that can be attached to a chamber of deputies, in such sort as to be capable of applying a *veto*, or so much as a cause of retardation—a *bar*, or a *drag*—to any of its proceedings: such, whatsoever be the *powers* attributed to it, whatsoever the *persons* by whom the situation composed of those powers is conferred."[8]

[7] On Norway, see Lees-Smith, pp. 179–204, and Roberts, pp. 211–221; on the Bryce suggestion, see the Bryce *Letter*, pp. 7–13. It is to be noted that the Norwegian Lagthing can hardly be called a second chamber.

[8] *Works*, vol. IV, pp. 420–421.

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Bentham briefly argues against a second chamber exercising either judicial authority, as in the case of the House of Lords, or executive authority, as in the case of the Senate of the United States, contending that the sphere of legislation is distinct from both justice and administration. The function of legislation is to define general principles, while that of justice and administration is to apply these general principles in detail. His discussion, however, is almost entirely confined to an analysis of the difficulties arising out of the existence of two chambers both participating in legislation. His concentration on the legislative activity of the second chamber is indeed justified, for this is the crux of the question, and it is here that his discussion is very pertinent to our day.

The existence of two chambers, each sharing in legislation, will, according to Bentham, involve useless delay in the process of legislation. To pass a law will then necessarily cost double the amount of effort. The same documents, witnesses, and most of the arguments will have to be presented in both chambers. In fact, the delay which the existence of a second chamber will produce may be infinite, for in addition to the double amount of work there will also arise deadlocks due to mutual jealousies and conflict of authority. Thus, wholesome legislation will be retarded and the people deprived of its benefit, while those who are opposed to all reform will have additional opportunities to conceal their selfish interests behind parliamentary guile and craft. The king, indeed, will encourage hostility between the chambers, for then he will be able to enhance his power by siding with one chamber against the other. There will also be the loss of time of the officials who participate in debates, for they will have to appear in both houses; and if the members of the assembly receive remuneration, an unremunerative expense will be incurred. If the first chamber has not been wont to give legislation appropriate consideration, the best check on it is, not a second chamber, but the indignation of the voters. Bentham felt that the existence of a second chamber might enhance the power of royalty. This was a danger in his day. In our own time, under different conditions, the alliance

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of the executive with the upper house against the lower house has not been unknown. This was especially the situation in the old imperial government of Germany.[9] Bentham fails to consider the effect of the existence of a strong second chamber on a parliamentary executive, for obviously the emerging parliamentary executive of his day was as yet outside the focus of systematic attention. Assuredly, the development of the parliamentary executive of the English type has not strengthened the argument for a second chamber.

In addition to delay, the existence of two chambers will also, according to Bentham, enlarge the opportunities for official and private corruption. The smaller the number of the members of the second chamber the more easily will it be controlled by sinister interests, for the entire process of legislation may then be perverted merely by exercising pressure on it. The second chamber will be in a position to exchange favors with the administration at the expense of the rest of the people. In fact, it may easily become the tool of particular and private interests. The danger that Bentham in the main emphasized is that of official jobbery. In our own day, however, the danger is less from official corruption than from private groups representing vast aggregations of property. During the century since Bentham, appointment by civil service competition, legislation prohibiting certain forms of jobbery, and the greater popular responsibility of the executive have eliminated to a considerable extent the petty intrigue of officials, but the impact of property on government is as ominous as ever. In our own day second chambers are criticized chiefly because they are subservient to the pressure of economic interests, as, for example, the Senate of the United States before the change in the method of its selection, and also some of the state senates.

To eliminate these sinister influences it is necessary, according to Bentham, to establish the rule of the majority, because only then will it be possible to maintain the greatest possible happiness. His belief in the rule of the majority was bound up with

[9] See on this point J. H. Morgan, *The Place of the Second Chamber in the Constitution* (National Liberal Club, London, 1910), pp. 9–18.

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the faith—which to us seems unduly optimistic—in the enlightened self-interest of men and in their capacity for effective participation in common affairs. Unless there is a special reason to the contrary, the judgment of the majority in the legislature will coincide more closely with the interest of the community than that of the minority. The existence of two chambers, Bentham thought, may, however, frequently nullify the rule of the majority. Under the bicameral form, even a unanimous opinion of the first chamber will be defeated by a majority of only one in the second. "Say, for example," he argued, "number of members in the one house 300; in the other 40: 21 in the smaller house suffice to overrule the will of 19 in the same house, added to the 300 in the other house."[10] One assembly representing the majority is essential, but another assembly is mischievous, for it may stultify, or prevail over, the majority. Bentham did not consider the various methods by which the will of the majority can be made to prevail in cases where disagreement exists between the two houses, such as, for example, a joint session of the two houses or an appeal to the voters by means of the referendum. He probably would have regarded such expedients as futile, for under the unicameral form the rule of the majority is secured immediately, without further complications.

Bentham did not fully discuss the basis of the distribution of legislative powers between the two chambers. Shall the first chamber be supreme in finance? If so, what is the definite extent of the powers of the second chamber? These specific questions he made no attempt to elucidate. He was, however, conscious of the general problem. "If it be established," he stated, "that there are to be two chambers, out of this single circumstance spring a swarm of questions, pregnant, all of them, with doubts and difficulties. With respect to the *whole* field of legislation taken together, shall each have the initiative, or shall one of them alone, and which, have the initiative, and the other have the negative? Or, with relation to *certain parts* of that field, shall the initiative be possessed exclusively by one, and

[10] *Works*, vol. IX, p. 115.

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which of them? Here, then, comes the necessity of lines of demarcation, and thence, not only certain complication, but probably continual contest and dissension."[11] There would always be a clash of authority in particular cases. He further held that it would be impossible to keep the two houses on a level of equality or any other preordained equilibrium. Whatever may be the legal provisions, one house will easily emerge as superior to the other. The inferior chamber, however, will not allow itself to be eclipsed; hence it will attempt to enhance its power by petty annoyance. If its power is limited to rejection, it will reject everything. If its power is limited to delay, it will delay everything. Deprived of the power to govern, it will attempt to make government difficult for others. It will check, interfere, and quibble. It will muster the whole artillery of fallacies to substantiate its petty claims. Under such conditions, the machinery of government will soon feel the evil effects of carrying a useless contrivance.

The consequence of this drag on legislation will be serious. The constant clash of authority between the two chambers, or the petty annoyance, will tend to make legislation complex, prolix, and obscure. To Bentham, who as a legal reformer aimed at making legislation lucid and unambiguous, this possibility was extremely dangerous. Such conditions, he believed, will enable the crafty representatives of particular interests to profit at the expense of the community. The persons interested in specific legislation will have difficulty in comprehending the good the community is trying to bring forth or the evils that it is trying to avoid. To this must be added the fact that in passing legislation each house may act on different principles from the other. The arguments that will be presented in one house may not be offered in the other. The proposer of the bill, who may have made a special study of the question, will present his arguments in one house; the other house may object, but will not hear the defense of the person who knows most about the subject. No single house, in fact, may have a full discussion

[11] *Works*, vol. IX, p. 116.

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of the question. The effect of this situation on the results of legislation will be highly mischievous.

We should hardly expect that Bentham would omit a refutation of the common arguments offered on behalf of a second chamber. His reply is indeed comprehensive. He thus held that the argument that a second chamber may possess a special fitness is fallacious; for if the special fitness is for legislation, then the second chamber should be the first and no other is necessary. Nor can a bicameral legislature be justified on the ground that a second chamber will check the haste of the first by giving greater consideration to proposals. If greater consideration is desirable, it should take place in the first, not in the second, chamber; for the first chamber is the more important center of activity. The best veto on haste is the verdict of the people to whom the members are responsible. The people will base their judgment on the interest of the majority. Those who advocate a second chamber desire that it should check, not haste, but, in truth, the interest of the people, on behalf of private interest. Nor can a second chamber be supported on the ground that its members will be more wise and sagacious than those of the first, since, among other provisions, there is usually one that its members shall not be below a certain age limit. The proper place for wisdom and sagacity is in the first chamber. As to age, wisdom without moral purpose is dangerous, and moral purpose has no relation to age. Youth, in fact, is prone to high moral exaltation on behalf of the general interest. There is no danger, further, that the immature will be in a majority in the first chamber. One assembly is a sufficient training ground for future statesmen. Bentham could have added that for the purpose of technical revision of legislative proposals an expert parliamentary draftsman is preferable to an assembly of laymen. Nor is the present proposal to compose a second chamber of specialists representing functional units any less vulnerable. To make available the knowledge of experts it is not necessary to organize a special chamber; for a single chamber can, by consultation, also utilize such knowledge.

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It has been made apparent that the crux of Bentham's opposition to a second chamber is the fear that such a body may stultify the will of the majority. On the "self-preference principle," the end of government—"the greatest happiness of the greatest number"—can be attained solely by the participation of all in the selection of the governors. Only then can there emerge a coincidence between the interest of the governor and that of the governed. The effective articulation of the will of the community predicates, for practical purposes, majority rule. To secure that the governors may remain the servants of the majority, Bentham advocated a wide extension of the suffrage, a secret ballot, equal electoral districts, annual parliaments, legislation prohibiting corruption, the accurate publication of the proceedings of parliament, and single chambers. Only under these conditions will the immediate and constant responsibility of the officials to the electorate be realized. Thus Bentham's defense of single chambers is an integral part of his belief in majority rule. It is the logical conclusion of his general political ideas.

At the present time the democratic creed advocated by Bentham, which in his day was considered a revolutionary proposal, is generally accepted. In fact, most of his suggestions have now been realized. With the wide acceptance of democracy, we find that justification of a second chamber has taken a different turn. In the age of Bentham a second chamber was defended on the basis that it offered a check on the incompetence and impetuosity of the populace; now, however, it is generally supported on the basis that it puts a check on the first chamber in the interest of the democracy.[12] It is agreed that the will of the people must ultimately prevail, but it is argued that single-chamber government may make possible the frequent misrepresentation of the interest of the people. It is therefore held that the most important function of a second chamber is its power to appeal from the representatives directly to the electorate. The length of the term of the first chamber,

[12] See Lees-Smith, pp. 32–46; the Bryce *Letter*, p. 4; and Sir John A. R. Marriott, *The Mechanism of the Modern State* (Oxford, 1927), vol. I, pp. 404–405.

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the indecisiveness of a general election, the influence exerted by powerful minorities, and the control of party cliques may cause the first chamber to distort the popular will, especially on vital issues. A second chamber can ascertain the opinion of the voters, either by delay or by a direct appeal to them on specific critical issues. An upper house is thus considered as an instrument of democracy and not as a curb upon it.

This restatement of bicameralism does not, however, make it any more tenable. Whatever may be the defects of democracy, they will not be cured by a second chamber. It is fallacious to suggest that an upper house as such is a more perfect barometer of popular interest than a lower house. The incessant clamor of the press, the pressure of diverse groups, the results of by-elections, the fear of the next election, the danger of a mutiny within the ranks of the government party, are normally sufficient means of keeping a government within the bounds of popular opinion.[13] A shorter term for members of the first chamber and constitutional limitations on its powers may make it even still more sensitive to the generally dominant opinion. Nor does the current defense of bicameralism make any appreciable approach to solution of the difficulties, indicated by Bentham, connected with the powers and composition of a second chamber. It was Goldwin Smith who said: "It passes the wit of man to construct an effective second chamber."[14] Lloyd-George is a recent witness to the fact that all previous attempts to reform the House of Lords have failed.[15] Whatever may be the defense of a second chamber, once we attempt to organize one we face an insurmountable problem.

The justification of bicameralism in the interest of democracy is especially incongruous when we discern that its advocacy is a part of the defensive armor of the present property system. The real interest of its supporters is to offer a bulwark against

[13] It is interesting to note that the Tory government was forced to withdraw its proposals to reform the House of Lords, as announced in that chamber on June 20, 1927, largely because of opposition among its own supporters. See reference to the Parliamentary Debates given above.

[14] Quoted in J. A. R. Marriott, *Second Chambers* (London, 1910), p. 1.

[15] Parliamentary Debates (Commons), fifth series, vol. 208, col. 1324.

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the aims of the first chamber, elected by the socialist masses of Europe, to bring about a fundamental reconstruction of property.[16] Their intention is to place property in a predominant position in the state, in the interest of a small portion of the population. Such a purpose is indefensible. To ascribe special sanction to the present economic arrangement is to identify the results of a particular historic ethos with eternal verity. Property, like religion, the family, and the state, must appeal to the heart, the conscience, and the intelligence of men. It must find its vindication in social purpose. It must not be withdrawn by cumbersome machinery from competition in a free market. The end of the state is human welfare and not the perpetuation of the prevailing property system. To insist that that system be placed on a special pedestal is not only a confession of weakness but a confusion of means with ends.

[16] See on this point H. W. V. Temperley, *Senates and Upper Chambers* (London, 1910), pp. 129–130, and G. Lowes Dickinson, *The Development of Parliament* (London, 1895), pp. 160–183.

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THE LAW OF MARTIAL RULE

CHARLES FAIRMAN
Pomona College

It is not in the least unusual, in newspaper accounts of a strike, riot, flood, or fire, to read that the governor has proclaimed martial law and summoned the militia to the threatened zone. However exaggerated such reports may be, they are evidence of a general belief that there exists some mysterious "martial law" which, when proclaimed, augments the powers of soldiers and paves the way for heroic measures. Nor are these notions wholly fanciful. For such a proclamation may indeed be followed by an extraordinary régime in which the military authority will issue regulations for the conduct of the civil population, troops may be called upon to take life, and perhaps the individuals accused of fomenting trouble will be held without authority of a court, or in some cases may even be tried by a military tribunal. Quite likely these severe measures will receive the approval of public opinion. Yet it is surprising that a people ordinarily rather legalistic should have evinced so little disposition to inquire what rules of law, if any, govern the exercise of these military powers. To answering that unasked query the present study is addressed.

I. THE PROBLEM

At the very outset of a study of martial law one is bewildered by the haze of uncertainty which envelops the subject. The literature relating to it is replete with dicta and aphorisms often quoted glibly as universal truths, whereas they are properly limited to a particular significance of the term "martial law." "It is not a law, but something indulged, rather than allowed, as law."[1] It is "built upon no settled principles, but is entirely arbitrary in its decisions."[2] It is "nothing more nor less than the will of the general."[3] It is "totally exploded," and does not

[1] Hale, *History of the Common Law*, 34.

[2] Blackstone, *Commentaries* (Cooley's 2nd ed.), I, 412.

[3] Duke of Wellington, in Gurwood, *Wellington's Despatches*, IV, 24, quoted by Clode, *Military and Martial Law*, 162. Repeated in Hansard's *Parliamentary*

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have "any place whatever within the realm of Great Britain."[4] On the other hand, Parliament once recognized an "undoubted prerogative" of the crown to proclaim "martial law."[5] During the Boer War a South African judge declared that "there can be no doubt that there are occasions when such an extraordinary power may be lawfully employed, and it is, I think, a misuse of terms to speak of martial law as if it were an entire illegality. . . . ."[6] Attorney-General Cushing was of the opinion that Hale labored under "a total misapprehension of the matter," and that Lord Loughborough was "totally inaccurate." He added with assurance that the English commentators were quite at sea, while in this country "it is still worse."[7] These contradictions might be elaborated at length. Clearly there is need for more accurate definition.

Other problems emerge. What is the legal nature of a proclamation of so-called martial law? Does it endow the government with some extraordinary power which it did not formerly possess? Does a proclamation by any merit of its own justify the measures about to be taken? Or is it merely a notice of the purpose of the government? Another question as to the legal nature of a proclamation of martial law arises: Is its recital conclusive of the facts? When, for example, in the course of a labor dispute in the mines of West Virginia the governor declared by proclamation that a state of war existed in designated portions of the state, and that martial law should prevail, were the courts bound to accept this view?

It is often said that only necessity justifies measures of martial law. What degree of necessity will suffice? Dicey would require "immediate necessity;"[8] while Sir Frederick Pollock would be

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Debates (3rd ser.), Vol. 115, p. 880. This definition was adopted by the Supreme Court of the United States in United States v. Diekelman (1875), 92 U. S. 520, 526.

[4] Lord Loughborough, in Grant v. Gould (1792), 2 H. Blackstone 69, 98, 99.

[5] 43 George III, c. 117 (1803).

[6] J. Mason, in Morcom v. Postmaster General (1900), 21 (N. S.) Natal Law Reports 32.

[7] 8 Opinions Atty. Gen., 365 et seq. (1857).

[8] *Law of the Constitution* (8th ed.), Appendix, Note x.

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satisfied with mere political necessity or expediency.[9] And to what extent does necessity justify—legally, or only morally? A régime of martial law often has as its sequel both civil and criminal actions at law. Does the military officer who acted under necessity appear before the court with clean hands? Or is he only morally justified for his summary acts—a fit subject for a legislative act of indemnity? In the United States, would an act of indemnity be constitutional?

What branch of government is the final judge of the necessity of acts, otherwise unlawful, which, it is alleged, were requisite in the emergency? The legislature, by granting or withholding indemnity? The executive, by a conclusive proclamation? Or the judiciary? If it were left to the judges, one court might, on habeas corpus proceedings, free a person arrested by the soldiers, while another court would decline to interfere. This, in fact, was the situation in Ireland in 1921.[10] If the courts are to make the final decision, may they do so during the period of martial law, or only afterwards? In other words, does the proclamation of martial law *ipso facto* suspend for the moment the jurisdiction of the ordinary courts? If so, consider the unhappy situation of the individual whom a military commission has tried and sentenced to death.

These and many other questions present themselves. The ones here propounded are not merely academic or speculative; all of them have arisen as necessary factors in the decision of actual cases. A régime of martial law is productive of controversies with which the judges are little accustomed to deal, and which they experience great difficulty in resolving. This is evident from the numerous dissents, as well as from the fact that where unanimity prevails the judges often reach their conclusions by quite different routes.

II. THE NATURE OF MARTIAL RULE

Our problem may first be attacked by seeking to understand the terms used. Martial rule obtains in a domestic community

[9] *Law Quarterly Review* (1902), vol. 18, p. 162.
[10] See Egan v. Gen. Macready (1921), 1 Irish Reports 265.

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when the military authority rises superior to the civil in the exercise of some or all of the functions of government. The expression "martial rule" is more correct than "martial law."[11] For if martial law is no law (following Hale's dictum), then the name is contrary to the fact. In employing this terminology, we escape the obscurity of meaning which attaches to "martial law." For much confusion has resulted from using that term, often without discrimination, in five different senses. First, as equivalent to "marshal law"—a legal system anciently exercised by the constable and marshal of England, especially over armies in the field.[12] Martial law in this sense is now obsolete.[13] Second, punishment "according to the justice of martial law" was called down by Tudors and Stuarts upon the heads of civilians generally, and at times and places quite apart from any military operations. This pretended right to suspend the established laws of criminal procedure was declared illegal by the Petition of Right.[14] Again, martial law has sometimes signified military law—a code for the government of the army. Fourth, the term is synonymous with military government—power exercised during hostile military occupation. And there remains a fifth connotation, i.e., the principles of constitutional law governing the use of military force in the conduct of government in time of public danger. This last is the object of our study.

In England, especially during the boisterous struggle for parliamentary reform, the courts had numerous occasions to pass upon the use of troops to preserve the peace. The pith of the decisions is this: If the occasion demands, it is the duty of every citizen, and especially of every magistrate, to do all he can to restore order and to prevent the commission of a felony; and he may be assured that whatever is honestly done will be

[11] "Let us call the thing by its right name; it is not martial law but martial rule." David Dudley Field, in his argument in Ex parte Milligan (1866), 4 Wallace 2, 35.

[12] Maitland, *Constitutional History*, 266; Coke, *Fourth Institute*, c. 17.

[13] Blackstone, *op. cit.*, III, 68.

[14] (1628), 3 Charles I, c. 1.

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justified by the common law. For the purpose of establishing civil order, a soldier has the same rights as any citizen.[15] This exposition of the law is equally applicable to the United States. The legal justification for a resort to martial rule in time of war or insurrection is found in an application of these principles to an extreme case—an extremity where organized military units must take the place of individual citizens, and where the military commander rises superior to the local magistrate.

On the authority of a number of recent decisions, it may be said that the American courts recognize degrees of martial rule: absolute (or punitive) and qualified (or preventive). In the latter form, the military authority issues and enforces police regulations, arrests and detains without warrant, and generally takes such measures as then and there seem necessary for the prevention or suppression of breaches of the peace. But it will refrain from exercising judicial power; on the termination of qualified martial rule, prisoners will be liberated or surrendered to the civil authorities. Martial rule in its punitive phase comprehends all this and something more; it includes trial and punishment by military authority.

Martial rule differs from the suspension of the privilege of the writ of habeas corpus in three particulars. First, the suspension does not *ipso facto* transfer any power from the civil to the military officers. Further, it will be seen that in some instances in the United States martial rule, in a qualified degree, has in fact existed and been upheld by the courts, even though the privilege of the great writ was, in legal contemplation, not suspended. For the petition, in the opinion of the court, may show no facts calling for interference with the measures which the military authorities have taken.[16] The courts are not to be made "a city of refuge whereunto malefactors may flee for

[15] Rex v. Kennett, and Rex v. Pinney (1832), 5 Car. & Payne 282; Burdett v. Abbott (1812), 4 Taunt. 401; Redford v. Birley (1822), St. Tr. (N.S.) 1071; Chief Justice Tindal's charge to the grand jury (1832), 3 *ibid.* 2; Regina v. Neale (1839), 9 Car. & Payne 431.

[16] In re Boyle (1899), 6 Idaho 609; In re Moyer (1905), 35 Colo. 154 and 159; Moyer v. Peabody (1906), 148 Fed. 876, (1909), 212 U. S. 78; Ex parte McDonald (1914), 49 Mont. 454.

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protection from punishment justly due," declared the supreme court of Idaho. Finally, martial rule is characterized by restrictions upon the right of assembly and by many other measures which could not be justified merely on the ground that the privilege of the writ of habeas corpus was suspended.

III. INSTITUTING MARTIAL RULE

The term martial law is unknown to the federal Constitution. Nor does it appear in the statutes, save for three acts applicable to the Philippines, Hawaii, and Porto Rico, respectively.[17] Yet it is none the less true that a condition of martial rule may come into being pursuant to the provisions of the Constitution and statutes. The constitutional provisions most germane to this study are these: (1) Congress may provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasion; (2) the privilege of the writ of habeas corpus shall not be suspended except when in cases of rebellion or invasion the public safety may require it; (3) the president is commander-in-chief of the armed forces, and is enjoined to take care that the laws be faithfully executed; (4) the United States guarantees to every state a republican form of government, and is charged with protecting each state against invasion and (on proper application) against domestic violence; and (5) there are the limitations imposed by the bill of rights.

The most important statutory provisions are comprised in Sections 5297 to 5300 of the *Revised Statutes*. Congress there designates the president as the authority competent to call forth the militia. He may employ the militia and the regular forces whenever, by reason of unlawful obstruction or rebellion, he judges that it is impracticable to enforce federal laws by the ordinary course of judicial proceedings; so, too, where a state fails to protect the people in the enjoyment of any rights or privileges secured to them by federal law. When the president judges that it has become necessary to employ military forces

[17] 29 Stat. at L. 553; 31 Stat. at L. 153; 39 Stat. at L. 955. These laws authorize the governor to place the islands, or any part thereof, under martial law.

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to suppress insurrection, he shall forthwith, by proclamation, command the insurgents to disperse.

In the constitutions of only seven states is martial law mentioned by name, i.e., those of Vermont, New Hampshire, Massachusetts, Rhode Island, Maryland, South Carolina, and Tennessee. The meaning of these provisions is not entirely clear. But, judging from the context, as well as from the early date at which they were first framed (when martial law was considered as embracing military law), we may conclude that their object was to forbid that civilians should be treated as though they were soldiers and tried by court martial. Apparently these provisions have never been interpreted by the courts of the respective states.

Closely related to martial rule are the provisions of state constitutions as to the suspension of the writ of habeas corpus. In thirty states the law is substantially as in the federal Constitution. In ten the prohibition is unqualified (no exception being made for rebellion or invasion). In eight others it is made clear that only the legislature may suspend the privilege of the writ.

In the constitution of every state save New York it is provided that the military shall be in strict subordination to the civil power. This provision has proved no bar to qualified martial rule, since the courts have consistently held that so long as the troops are used under the authority of the chief executive, the military is still in its due subordination to the civil power, even though soldiers have supplanted all magistrates other than the governor.[18]

In practically every state it is provided, either by the constitution or by statute, that the governor (and sometimes subordinate civil officers as well) may employ the militia to suppress insurrection and for other purposes enumerated. Often the law authorizes the governor to declare by proclamation that a designated portion of the state is in insurrection. Missouri, Nevada, and Utah concede to the governor an authority to

[18] In re Moyer, *supra*; Franks v. Smith (1911), 142 Ky. 232; Ex parte McDonald, *supra*.

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declare "martial law." West Virginia goes to lengths unprecedented, it is believed, in American legislation in providing that "in the event of invasion, insurrection, rebellion or riot, the commander-in-chief may in his discretion declare a state of war in the towns, cities, districts or counties where such disturbances exist."[19] When the executive is authorized to declare the existence of a state of insurrection, the proclamation to that effect is conclusive.[20] Frequently, however, the legal effect and consequences of such a declaration are not specified, thus leaving it to the judiciary to decide in particular cases. What measures are appropriate and justified in suppressing a rebellion will be considered below.

We turn from martial rule as a means of suppressing insurrection to martial rule as an accompaniment of war. It is not difficult, in a general way, to distinguish between insurrection and war. The former consists in the open and active opposition of a number of persons to the execution of the laws, if of a character so formidable as to defy for the time being the authority of the government, even though not accompanied by bloodshed nor of sufficient magnitude to render success probable.[21] War is the condition where governments contend by force. Insurgents may drive out the agents of the government and set up a government of their own in its stead, and may place an army in the field and wage war in a material sense.[22] In these premises it may be said that the insurgents may appropriately be recognized as belligerents. But whether, as a matter of the domestic law of the parent state, war in a legal sense exists will depend upon whether the parent state recognizes

[19] W. Va. Code, 1923, c. 18, sec. 92. An examination of the act raises the query whether the legislature intended anything more than to enable the governor to subject the militia to the severe war-time penalties envisaged by the Articles of War, by declaring that, so far as the militia is concerned, the conditions of war shall prevail.

[20] Martin v. Mott (1827), 12 Wheat. 19; In re Boyle, In re Moyer, Moyer v. Peabody, Franks v. Smith, Ex parte McDonald, *supra*; Sweeney v. Commonwealth (1904), 118 Ky. 912; Barcelon v. Baker (1905), 5 Philippine 87.

[21] In re Charge to Grand Jury (1894), 62 Fed. 828.

[22] The Three Friends (1897), 166 U. S. 1, 63.

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the insurgents as belligerents.[23] It may ignore the hostile government they have set up and elect to treat them as traitors.[24]

It is important to inquire what branch of government is competent to determine when an insurrection has ripened into war. This is clearly within the powers of Congress, but in the Prize Cases[25] the Supreme Court went so far as to hold that the president also is competent to recognize the existence of a state of war and thereupon to exercise war powers, and that his decision is not reviewable by the courts. The duty of the governor to suppress insurrection against the government of his state seems essentially the same as that of the president with respect to the federal government. It might seem to follow, by parity of reasoning, that the law as expounded in the Prize Cases is equally applicable to the case of a governor. This would lead to the surprising conclusion that it would lie within the discretion of a governor to declare that an insurrection had developed into a war, and thereupon to treat the insurgents as though they were beyond the pale of constitutional protection. Lest so surprising a suggestion appear to envisage only an imaginary danger, it may be recalled that since 1912 West Virginia has had four "wars"—by proclamation of the governor.[26] Subsequent exercise of the pardoning power prevented the Supreme Court of the United States from passing upon the measures by which these "wars" were waged.[27] But an examination of the federal Constitution[28] leads to the conclusion that the conduct of war, with its legal effects, is exclusively a federal function. This was the holding of the highest court in Montana when the governor of that state sought to exercise war powers as a means of suppressing an insurrection.[29]

[23] Hyde, *International Law*, II, 193.

[24] Wilson, *Handbook of International Law*, 43 et seq.

[25] (1862), 2 Black 635.

[26] State v. Brown (1912), 71 W. Va. 519; Ex parte Jones (1913), *ibid.* 567; Ex parte Lavinder (1921), 88 W. Va. 713.

[27] Mathews, *Martial Law in West Virginia*, Sen. Docs. v. 22, 63rd Cong. 1st Sess., Doc. No. 230, p. 20.

[28] Art. I, sec. 10, cl. 3.

[29] In re Gillis (1914), 49 Mont. 454.

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A declaration of war does not necessarily lead to a condition of martial rule. As was the case during American participation in the World War, the theater of operations may be so distant and the danger so remote as not to justify any form of martial rule. When hostilities are close at hand, as was the case along the border in 1861 to 1865, the civil authorities may be unable effectively to preserve public order, and martial rule may obtain. As the Supreme Court of Montana said,[30] "when in domestic territory the laws of the land have become suspended, not by executive proclamation, but by the existence of war, the executive may supply the deficiency by such form of martial law as the situation requires."

Much has been written regarding the legality of a proclamation of martial law. But this question is inconsequential. In fact, the proclamation of martial law in addition to declaring the existence of insurrection is mere surplusage. The crucial question is this: Were the measures employed during martial rule justified by necessity? The military authority adds nothing to its stature by the mere fact that a declaration of martial law has been posted. Nothing becomes lawful because of such declaration that would not have been lawful without it.[31]

To summarize: The executive proclamation of a condition of insurrection is authorized by statute and is conclusive upon the courts. But the same is in no wise true, in general, of a proclamation of martial law. A declaration of martial law posted throughout the district is a step *in terrorem*; save where especially provided by law, it has no definite legal character. Martial rule is justified where it is necessary. It may be ushered in by a formal declaration, or it may originate in the mere fact that the civil administration crumbles away. But martial rule (unlike the French state of siege) is not a definite legal régime whose powers are determined in advance. Necessity is the only

[30] In re Gillis, *supra*.

[31] This was the opinion of Judge Garrison when secretary of war. Sen. Docs., vol. 19, 67th Cong., 2nd Sess., Doc. No. 263, p. 315. To the same effect was the opinion of the Earl of Halsbury in Tilonko v. Attorney-General of Natal (1907), A.C. 93.

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test. Legally, no wonders can be wrought by the talisman "martial law."

IV. MEASURES OF MARTIAL RULE: PUNISHMENT

The most far-reaching measure which may characterize martial rule is the trial and punishment of civilians by military commission. When may this be done? The opinion long received in English jurisprudence was that expressed by Sir James Mackintosh in the parliamentary debate on martial rule in Demerara a century ago[32]: "The only principle on which the law of England tolerates what is called martial [law] is necessity; its introduction can be justified only by necessity; its continuance requires precisely the same justification of necessity; and if it survives the necessity on which alone it rests for a single minute, it becomes instantly a mere exercise of lawless violence. When foreign invasion or civil war renders it impossible for courts of law to sit, or to enforce the execution of their judgments, it becomes necessary to find some rude substitute for them, and to employ, for that purpose, the military, which is the only remaining force in the community. While the laws are silenced by the noise of arms, the rulers of the armed force must punish, as equitably as they can, those crimes which threaten their own safety and that of society: but no longer; every moment beyond is usurpation; as soon as the law can act, every other mode of punishing supposed crimes is itself an enormous crime."

The exigencies of the Boer War put this view to the test of modern warfare and found it too restrictive. The British army advanced and retired through a country whose population comprised many British subjects of Boer origin, who aided the enemy and who, when apprehended, invoked the rights of British subjects. The opinions of the justices in the numerous South African cases constitute a learned and valuable literature

[32] Hansard's *Parliamentary Debates*, vol. 11 (N.S.), 1046–47. See also the leading case of Wolfe Tone, an Irish traitor. Tone was tried by a military court, but died while the legality of his trial was under consideration in the court of King's Bench. (1798), 27 State Trials, 613.

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on the law of martial rule.[33] The result of this litigation was to establish the following conclusions. The mere proclamation of martial law does not *ipso facto* suspend the ordinary courts. The judges are free to go behind the proclamation to see for themselves whether the necessity for martial rule is made out. But the proclamation is strong evidence, and the opinion of the general, especially in the matter of active operations, is entitled to great consideration. The fact that some courts are functioning does not prove the illegality of martial rule. Indeed it happened that courts were enabled, by reason of military support, to try cases even within a besieged city. When a state of war exists it is quite possible for civil and military tribunals to sit side by side, the latter hearing such criminal cases as the general thinks may safely be entrusted to them. On one point the judges disagreed, i.e., whether, once a state of war was made out to their satisfaction, they were estopped, *durante bello*, from interfering with particular measures which the soldiers were about to take. This was finally answered by the Judicial Committee of the Privy Council in the Marais case: "Where actual war is raging, acts done by the military authorities are not justiciable by the ordinary tribunals."[34]

For the duration of the World War, Parliament virtually abdicated in favor of the king in council; the judiciary made a similar sacrifice. In The King v. Halliday[35] it was held that under the authority which the Defence of the Realm Act ("Dora") gave to the crown an executive officer might order a subject to

[33] In re Fourie (1900), 17 Supreme Court Reports, Cape of Good Hope, 173; Queen v. Gildenhuys (1900), *ibid.*, 266; Queen v. Bekker (1900), *ibid.* 340; Umbilini v. General Officer Commanding (1900), 21 (N.S.) Natal Law Reports 86 and 169; Jacobs v. General Officer Commanding (1900), *ibid.* 86 and 157; Ex parte Marais (1902), A.C. 109. See also *Law Quar. Review* (1902), vol. 18, p. 143.

[34] The new doctrine laid down in Ex parte Marais was confirmed by the Judicial Committee in a case arising from a native revolt in Natal in 1906. Mgomini v. Governor (1906), 22 T. L. R. 413. Apparently the military trials were not necessary, but were considered desirable as a means of discouraging native revolts.

[35] (1917), A. C. 260. To a similar effect is The King v. Governor of Wormwood Scrubbs Prison (1920), 2 K. B. 305.

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be interned without trial, and that unless bad faith could be proved the courts should not interfere.

In Ireland, from April 29, 1916, to December 20, 1920, the military authorities governed and punished pursuant to broad acts of Parliament. Later, even this statutory régime was found inadequate to meet the exigencies of the revolt, and martial rule on a larger scale was instituted by proclamation of the lord lieutenant. Thereafter what was done had to be justified as in any other exercise of martial rule. In The King v. Allen[36] it was held that, when war actually existed, the court would not interfere with any punishment the general saw fit to mete out. The fact that courts of law were sitting did not invalidate trial by military court.[37] On a similar set of facts, the case of Egan v. General Macready[37a] was heard before the chancery division of the High Court of Ireland. Here the master of the rolls took issue with the decision in Allen's case. He thought that the doctrine of Ex parte Marais did not apply where the sentence of the military court imposed an irreparable injury. Eventually the military authority bowed to the court to the extent of liberating Egan. Later the master of the rolls receded from this contention.[38] In The King (Garde) v. General Strickland[39] the government contended broadly that its mere *ipse dixit* as to the existence of war was conclusive upon the judges—a contention which was repelled with emphasis. Eventually, indeed, the Court of Appeal held that the evidence submitted failed to show the continued existence of a state of war, and ordered the release of the prisoner.[40]

With this background for comparison, we turn to American cases on punitive martial rule. The leading instance is Ex parte

[36] (1921), 2 Ir. Reports 241.

[37] This went farther than Marais' case, since Allen had been sentenced to death.

[37a] (1921), 1 Ir. Reports 265.

[38] The King (Childers) v. Adjutant General (1923), 1 Ir. Reports 5.

[39] (1921), 2 Ir. Reports 317.

[40] The King (O'Brien) v. Military Governor (1924), 1 Ir. Reports 32. Thereupon the Public Safety Act was passed by the Free State Parliament, and military prisoners were held as before. The King (O'Connell) v. Military Governor (1924), 2 Ir. Reports 104.

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Milligan,[41] too well known to need extended comment. The gist of the opinion which Justice Davis filed for the majority of the court was this: "Martial law cannot arise from a threatened invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration. . . . . Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war." Obviously, the tone of this language is much more restrictive of military authority than that lately employed by the courts of the British Empire. It is submitted that the law should not be based upon a fiction. The true question is not whether the courts are able (perhaps with military support) to keep open, but whether they are functioning effectively. The conclusion to which this study would point cannot be better expressed than by quoting Mr. Hughes[42]: "Certainly, the test should not be a mere physical one, nor should substance be sacrificed to form. The majority [in the Milligan case] recognized 'a necessity to furnish a substitute for the civil authority,' when overthrown, in order 'to preserve the safety of the army and society.' If this necessity actually exists it cannot be doubted that the power of the nation is adequate to meet it, but the rights of the citizen may not be impaired by an arbitrary legislative declaration. Outside the actual theater of war, and if, in a true sense, the administration of justice remains unobstructed, the right of the citizen to normal judicial procedure is secure."

It is a far cry from the spirit of the Milligan case to the views entertained by the supreme court of West Virginia[43] in 1912 to 1914, when an exercise of martial rule was challenged before that tribunal.[44] Embattled strikers fought with imported strikebreakers to determine whether or not the coal operators could

[41] (1866), 4 Wall. 2.

[42] *War Powers under the Constitution*, 12.

[43] J. Robinson, vehemently dissenting.

[44] State v. Brown and Ex parte Jones, *supra*; Hatfield v. Graham (1914), 73 W. Va. 759.

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be compelled to recognize the union. The governor met the situation by declaring the existence of a state of war. The opinions of the court constitute a surprising perversion of accepted principles of American jurisprudence. Suffice it to say that a majority of the court cleared at one jump all of the obstacles which federal and state constitutions had placed in their way and upheld the governor in the exercise of war powers. These were held to include trial and punishment of civilians by military commission, without regard to whether such measures were in fact necessary. The destruction of a printing press was likewise upheld. In short, the situation was this: once the governor proclaimed that war existed, there was no legal restraint upon his conduct, unless bad faith could be proved to the courts, or unless he should be impeached and convicted. The people of the proclaimed zone were placed beyond the pale and treated as public enemies.

Eventually the court was obliged to call a halt. In 1921 the governor sought to cope with a labor dispute by declaring the existence of a state of war and ordering the acting adjutant-general to suppress it with the aid of civil authorities and the posse comitatus. In view of its decisions in 1912, the supreme court could scarcely deny that when the governor declared the existence of war, it was war. Yet the justices could not help knowing that it takes more than one officer to wage a war. So they drew a line between "actual" and "merely theoretical" warfare, and discharged the prisoners who had been arrested for violations of martial law regulations.[45]

In September, 1914, the militia of Montana was occupying Silver Bow county, then in insurrection. Dan Gillis petitioned for a writ of habeas corpus, alleging that he was unlawfully detained by the military authorities.[46] Major Roote, being appointed a summary court, had tried Gillis, without jury, on a charge of assaulting and resisting an officer. The petitioner had been found guilty and sentenced to the payment of a fine of $500. The court stated the question involved in Gillis' case

[45] Ex parte Lavinder (1921), 88 W. Va. 713.

[46] In re Gillis, *supra*.

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thus: Is it possible for the executive, by proclamation or otherwise, constitutionally to establish in this state any form of martial law which will authorize the conviction of a civilian for crime without trial by jury? The court was emphatically of the opinion that this was not possible.

The insurrection in Silver Bow county was not a war, such as confronted the Supreme Court of the United States in the Prize Cases. Hence any talk of war powers was beside the point. As to the courts being open in the proclaimed zone, the court said: "So far as the right to trial by jury in case of insurrection is concerned, it does not seem to us vitally important whether the courts are or are not open when the military appear. It may be granted that courts which are prevented by insurrection from executing their process are not open in contemplation of the law. To open them is a part of the duty devolving upon the military. It was conceded at bar that some of the courts of Silver Bow county are in operation, though it was insisted to be only such as are permitted by the military authorities; the others being closed by their order. No such closure can be recognized."

At this point as at others, therefore, the Montana court turned its back upon the path taken by the highest court of West Virginia. If the test of the courts means anything, it is obviously illogical to argue that the military may try and punish when the courts are closed, and then add that the courts are closed by the proclamation of martial law. The court continued: "We have somewhere met with the argument that, because the insurrection may be prolonged, the summary trial of offenders is preferable to their indefinite detention. This is not even an argument from necessity, but from convenience only. We know of but one court of last resort which gives it any countenance, and that court we do not choose to follow." This was a sharp dissent from the exposition of the law in West Virginia. The Montana court concluded: "The trial and commitment of petitioner Gillis were void, and his detention thereunder cannot be upheld. But he is not entitled to his release. The record discloses an abortive attempt to try and punish him for an alleged

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violation of the laws of the state. He must, therefore, be remanded to the custody of the respondents, to be dealt with according to law."

In 1920, on the occasion of a longshoremen's strike, Governor Hobby of Texas declared that martial law should prevail in Galveston. The civil officials of the city were suspended, and a militia general was directed to assume their functions. Before a captain, detailed as provost judge, a citizen was arraigned on a charge of exceeding the speed limit fixed by city ordinance, convicted, and fined. In default of payment, he was committed to jail. On habeas corpus proceedings,[47] the federal district court upheld the military authority; the governor's action was not reviewable; the governor had the power to declare "martial law" and to "do anything necessary to make his proclamation effective." The court relied on The Grapeshot,[48] a Civil War case upholding the jurisdiction of a provisional court created by President Lincoln at New Orleans as an exercise of the war power—a precedent quite beside the point in the premises.

Though the precedents are far from consistent, the conclusions which, it is believed, should follow from an examination of the cases on punitive martial rule are these. A state of war warranting punitive measures may conceivably exist even where the courts of law are sitting. The fact that in a given locality all courts of law are able to exercise their jurisdiction freely should create a presumption that the laws of peace govern that place. Punitive martial rule is legal only as a war measure. This restricts its exercise to the forces of the national government, and to the cases where belligerency (as contrasted with insurrection) has been recognized. Since, in general, a state is forbidden to wage war, it cannot legally exercise punitive martial rule.

V. MEASURES OF MARTIAL RULE: INTERFERENCE WITH LIBERTY AND PROPERTY

The decision of the executive is conclusive as to the existence of an insurrection. Is it likewise conclusive as to the measures

[47] United States v. Wolters (1920), 268 Fed. 69.
[48] (1869), 9 Wallace 129.

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necessary for its suppression? One of the measures to which the executive resorts most easily is the arrest and detention of persons who are believed to be fomenting the insurrection—the birds of ill-omen, such as "Mother" Jones, who hover about in times of unrest. It may be that the military authorities have had to act on suspicion, and that legal proof is at the moment out of the question. It may also be that the authorities, rightfully or not, have lost all confidence in juries drawn from the vicinity. The person detained will sue out a writ of habeas corpus, and the legality of the detention will come before the courts. Or the executive may take the bolder course and declare that the privilege of the writ of habeas corpus is suspended in the case of military detentions. Or the military authorities may contend that martial law has been proclaimed, and that the proclamation *ipso facto* suspends the privilege of the great writ of liberty.

It is now generally conceded that the legislature, in its discretion, must decide when the public safety requires the suspension of the writ of habeas corpus. This was the opinion, *obiter*, of Chief Justice Marshall.[49] Chief Justice Taney held firmly to the same view in Ex parte Merryman,[50] though his exposition of the law proved unavailing before the determination of President Lincoln to uphold military officers in arresting persons of doubtful loyalty. There are other points of view from which the authority to hold persons without civil trial may not seem so objectionable in law. First, as the supreme court of Wisconsin held in a Civil War case,[51] there is a distinction between the legal suspension of the privilege of the writ of habeas corpus and that *ipso facto* suspension which takes place where war actually exists. When justified by the exigencies of war, a military commander may refuse obedience to the writ. This sort of suspension, continued the court, comes with war

[49] Ex parte Bollman (1807), 4 Cranch 75, 101.

[50] (1861), Fed. Case No. 9487. Followed in Ex parte Benedict (1862), Fed. Case No. 1292, and in Ex parte Moore (1870), 64 N.C. 802.

[51] In re Kemp (1863), 16 Wis. 359. This case was similar to Ex parte Merryman.

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and exists without proclamation, and it applies only to cases where the officer cannot consistently with his military duty obey the mandate of the civil authority.

Second, it has been held in a number of fairly recent cases that the governor's power to declare the existence of an insurrection and proceed to its suppression carries with it by proper implication the authority to hold persons who, in the governor's honest opinion, are tending to thwart his measures of suppression. Thus, though the privilege of the writ of habeas corpus was not suspended, the petition of the persons arrested would be found to show no facts entitling the petitioners to the writ. In this sense are In re Boyle, In re Moyer, and Ex parte McDonald.[52] This view was upheld in the Moyer case by a federal circuit court[53] and by the Supreme Court of the United States.[54] Moyer had brought a suit for damages against the governor of Colorado, who had held him in arrest. In expressing the opinion of the Supreme Court, Justice Holmes said in part: "So long as such arrests are made in good faith and in the honest belief that they are needed in order to head the insurrection off, the governor is the final judge and cannot be subjected to an action after he is out of office on the ground that he had not reasonable ground for his belief. . . . . No doubt there are cases where the expert on the spot may be called upon to justify his conduct later in court, notwithstanding the fact that he had sole command at the time and acted to the best of his knowledge. This is the position of the captain of a ship. But even in that case great weight is given to his determination and the matter is to be judged on the facts as they appeared then, and not merely in the light of the event. . . . . When it comes to a decision by the head of the state upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process."[55] It thus appears that

[52] All *supra*.

[53] (1906), 148 Fed. 876.

[54] (1909), 212 U. S. 78.

[55] This last cryptic sentence, remarks Professor Ballantine, fails to indicate whether public danger warrants the supersession, or only the postponement, of judicial inquiry. *Columbia Law Review*, vol. 12, p. 529.

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though the legal consequences of declaring the existence of an insurrection are not generally defined by statute, the courts construe that detention, for a period not excessive in duration, and in the absence of bad faith, is a proper measure of suppression. It will be noted that this is quite independent of any consideration of whether or not the governor has posted a proclamation of martial law.[56]

One of the ordinary incidents of preventive martial rule is the promulgation by military authority of a code of police regulations for the government of the civil population. So long as these are deemed reasonable, the courts will sanction their enforcement.[57] In fact, few cases arise on this point. If the courts will uphold the detention of prisoners, *a fortiori* they would uphold the legality of milder restrictions.

Where war exists, the necessity for interfering with personal liberty will be greater. Thus the supreme court of Natal refused to enjoin the military authorities from censoring mail during the Boer War.[58] Where military officers have adequate reason to believe that a person is planning to transport property to the enemy, they are justified in taking steps to thwart him, even to the seizure of his person.[59] Here as elsewhere, necessity, not a proclamation of "martial law," must be the defense of the soldier when he is called to account.

The same considerations that apply to interference with personal liberty govern also the case of interference with private property. It is an indubitable principle of the common law that overruling considerations of the public safety and welfare will justify the commission of a tort.[60] A state of war gives this

[56] On this point the supplementary opinion of the chief justice of Colorado in the Moyer case is specific. (1905), 35 Colo. 159.

[57] Commonwealth v. Shortall (1903), 206 Pa. St. 165; In re Smith (1913), 23 Ohio Decisions 667; Ela v. Smith (1855), 71 Mass. 121, 137. Franks v. Smith (1911), 142 Ky. 232, is rather strict in its view of the extent of military power.

[58] Morcom v. Postmaster-General, *supra*.

[59] Clow v. Wright (1816), Brayton (Vt.) 118; McKrell v. Metcalfe (1866), 63 Ky. (2 Duvall) 533. But see Smith v. Shaw (1815), 12 Johnson (N. Y.) 257.

[60] Malverer v. Spinke, 1 Dyer 36b; J. Buller, in Gov., etc., v. Meredith (1792), 4 Durnford and East 794, 797; Meeker v. Van Rensselaer (1836), 15 Wendell (N. Y.) 396; Russell v. Mayor, etc., of New York (1845), 2 Denio (N. Y.) 461.

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principle its greatest application. In the far-reaching decision of J. Avory, affirmed by the King's Bench and reaffirmed by the Court of Appeal, in the case In re A Petition of Right[61] it was held that in time of war the British crown, aside from any authority granted by statute, has power to take possession of and occupy without compensation any lands or premises for the defense of the realm. But in the later case of DeKeyser's Royal Hotel Ltd. v. The King[62] this pretentious assertion was considerably undermined. It was there said that the crown could not occupy any private property without compensation, for merely *administrative* purposes in connection with the defense of the realm. English constitutional history failed to show any basis for such a contention.

Our American cases on this subject arose, for the most part, out of the Civil War. Here it must be said that there is less than unanimity as to the extent of the power which the military may exercise over private property. Certain general points are admitted. Military necessity will justify a seizure of the citizen's property.[63] Private property may also be seized to prevent its falling into the hands of the enemy.[64] But neither a spurious pretense of military necessity nor any other excuse will be allowed to cover an act of wanton spoliation.[65] Though the constitutional protection thrown about property may mean something quite different in war from in peace, the existence of martial rule does not of itself abrogate the Constitution.

Necessity is relative. Whence the problem arises, What degree of necessity will justify interference with vested rights and

[61] (1915), 3 K. B. 649.

[62] (1919), 2 Chancery 197, affirmed by the House of Lords (1920), A. C. 508.

[63] Smith v. Brazelton (1870), 48 Tenn. (1 Heiskell) 44; Koonce v. Davis (1875), 72 N. C. 218.

[64] Bronson v. Woolsey (1819), 17 Johnson (N. Y.) 46; McKrell v. Metcalf, *supra*; Respublica v. Sparhawk (1788), 1 Dallas 383.

[65] Despan v. Olney (1852), Fed. Case No. 3822; Mitchell v. Harmony (1851), 13 Howard 115; Farmer v. Lewis (1866), 64 Ky. (1 Bush) 66; Short v. Wilson (1866), *ibid.* 350; Besk v. Ingram (1866), *ibid.* 355; Terrill v. Rankin (1867), 65 Ky. (2 Bush) 453; Yost v. Stout (1867), 44 Tenn. (4 Coldwell) 205; Wilson v. Franklin and Burleson (1870), 64 N. C. 141.

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personal liberty under plea of public danger?[66] We have the authority of the Supreme Court of the United States, speaking through Chief Justice Taney, for saying that a military commander has no discretionary power over the property of the citizen; "urgent necessity would alone give him the right." And this is a question for a jury to decide.[67] This statement of the law is doubtless not less true today. Even the order of the president would not warrant an infringement of constitutional rights.[68]

Yet it cannot be doubted that a decision by Congress, acting in its discretion in a matter committed to its power, that an emergency demands the restriction of the normal enjoyment of liberty and property would be entitled to much greater weight than the decision of an individual officer, or even of the president. Take the case of Wilson v. New,[69] where necessity was invoked to justify an unprecedented interference with liberty and property. Chief Justice White, speaking for the majority of the court, said that "although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed." It is evident from the principal and dissenting opinions that the justices realized that they were probing very close to the roots of the Milligan decision. If Congress could make such an enactment as was there involved in the name of interstate commerce, what might not be justified in the name of national defense? That lives may be drafted where Congress deems necessary for the prosecution of a war, we learn from the Selective Draft Cases.[70] And the decision in Hamilton v. Ken-

[66] This question was discussed exhaustively three centuries ago in The Case of Ship Money (1637), 3 Howell's St. Tr. 825.

[67] Mitchell v. Harmony, *supra*.

[68] Little v. Barreme (1804), 2 Cranch 170; Jones v. Seward (1863), 40 Barbour (N. Y.) 563; Griffin v. Wilcox (1863), 21 Ind. 370; Eifort v. Bevins (1866), 64 Ky. (1 Bush) 460; Jones v. Commonwealth, *ibid.* 34; Commonwealth v. Palmer (1866), 65 Ky. (2 Bush) 570; Koonce v. Davis, *supra*. "To justify, necessity must be urgent for the public service, and such as will not admit of delay. . . . ." Farmer v. Lewis, *supra*, and Bryan v. Walker (1870), 64 N. C. 141.

[69] (1917), 243 U. S. 332.

[70] (1918), 245 U. S. 366.

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tucky Distilleries and Warehouse Company[71] leads us to believe that property is not more sacred than lives where Congress has construed a necessity for national defense. In short, only urgent necessity would warrant an individual officer in interfering with the rights of person and property. But where Congress, invoking the war powers committed to its discretion, construes that there exists a necessity for such interference, the Supreme Court will be prone to accept its decision, the guarantees of the bill of rights to the contrary notwithstanding. In taking measures deemed necessary for the national defense, Congress is scarcely less free than the British Parliament.

The termination of martial rule is likely to raise the question of how far the legislature may grant indemnity from civil and criminal actions. As to criminal prosecutions, it seems evident that the state may forego the vindication due to its offended laws and provide a complete indemnity. Just as it may grant an amnesty to rebels, it may pass an act of oblivion to wipe out the criminality of acts done in suppressing rebellion. Whatever the legislature might have authorized in prospect it may justify in retrospect.[72] However, a civil right to recover damages is a property, not to be divested by statute any more than any other property. It was so held by the highest courts of Illinois[73] and Indiana[74] in suits to recover damages for false imprisonment during the Civil War. Still, the Supreme Court upheld Congress in passing a statute of limitations[75] to restrict not unreasonably the period of time within which suits for damages might be brought against military officers for acts in suppressing rebellion.[76] The opinion in Mitchell v. Clark seemed to go so far as to undermine the doctrine laid down in Ex parte Milligan,

[71] (1919), 251 U. S. 146.

[72] Tiaco v. Forbes (1913), 228 U. S. 549.

[73] Johnson v. Jones (1867), 44 Ill. 142.

[74] Griffin v. Wilcox (1863), 21 Ind. 370.

[75] 12 Stat. 755, amended by 14 Stat. 46.

[76] Mayor v. Cooper (1867), 6 Wall. 247; Bean v. Beckwith (1873), 18 Wall. 510 and (1878), 98 U. S. 266; Mitchell v. Clark (1883), 110 U. S. 633.

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since, as Professor Willoughby remarks,[77] it appears that the court justified an act of spoliation in loyal territory on the basis, not of necessity, but of Congressional sanction.

There have been many decisions on the liability of officers and soldiers for their acts during a period of martial rule. The principles of law seem to be as follows. An officer exercising a discretionary authority is responsible for acts of bad faith, but not for errors of judgment.[78] When, on the other hand, he acts outside his lawful authority, he must be prepared to prove the necessity for his acts; good intentions will palliate but not excuse a violation of private rights.[79] A subordinate is justified for obeying in good faith an order within the lawful authority of his senior.[80] For obeying an illegal order he is, in principle, jointly liable.[81] But where the subordinate was only an obedient and passive participant in an act not patently unlawful, he escapes from the liability, which attaches exclusively to his superior.[82] For a subordinate who in no wise acted as a principal, the question is, Was the act commanded such as a man of ordinary understanding would have known to be wrong? If not, the subordinate should not be held liable.[83]

To conclude: Under the American constitutional system there is committed to no branch of government a discretionary authority to ordain the suspension of the guarantees of the Constitution. Nor can such a situation legally be brought into being

[77] *Constitutional Law*, II, 1253. This decision was condemned by Hare, *Constitutional Law*, II, 981. Judge Advocate General G. Norman Lieber held that the decision meant nothing more than that Congress could legalize retrospectively what it might have authorized in the first instance. *North American Review*, vol. 163, p. 557.

[78] Jenkins v. Waldron (1814), 11 Johnson (N. Y.) 114, 121; Dinsman v. Wilkes (1849), 7 How. 89, and (1851), 12 How. 390.

[79] Mitchell v. Harmony, *supra*; Milligan v. Hovey (1871), Fed. Case No. 9605; McCall v. McDowell (1867), 1 Abbott (U. S.) 212.

[80] Despan v. Olney, *supra*.

[81] Little v. Barreme and Jones v. Seward, *supra*; Commonwealth v. Blodgett (1846), 12 Metcalf 56.

[82] So held as to Capt. Douglas in McCall v. McDowell, *supra*; Riggs v. State (1866), 3 Coldwell (Tenn.) 85; Queen v. Smith (1900), 17 Supreme Court Reports, Cape of Good Hope, 561.

[83] United States v. Clark (1887), 31 Fed. 710.

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by the circumlocution of declaring "martial law." But martial rule may in fact result from enforcing the constitutional mandate that the laws be executed, insurrections suppressed, and invasions repelled, as well as from an exercise of the power to wage war.

Necessity is the criterion of the legality of any measure of martial rule. Of this necessity the political branches of the government, usually the executive, will be the first judge. But an individual who is aggrieved may carry his case into court and have the necessity passed upon judicially. It has been seen that the courts of the British Empire, once they are satisfied that war actually rages in the place where the act complained of was committed, will postpone an examination of its propriety until the termination of hostilities. The last word which the legislature in the United States can pronounce in a case of martial rule may take any of the following forms: complete indemnity for criminal acts; a statute limiting reasonably the time within which civil suits may be brought; and finally a reimbursement for any judgments awarded or fines imposed upon one who has administered martial rule.[84]

In the Milligan case it was said that punitive martial rule could not legally arise from a threatened danger; that the exigency must be such as to close the courts. It has been argued that this proposition is too inflexible. The fact that the courts are exercising their jurisdiction without physical obstruction should be presumptive, but not conclusive, of a condition of peace. As necessity creates martial rule, so it limits its conduct and duration. The moment that the authority of the United States (or of a state) can be maintained by civil power, the military should revert to its normal subordination.

Many unfounded opinions are widely entertained as to the law governing martial rule in the United States. Experience shows that "martial law" may be invoked to cover iniquities wholly foreign to the spirit of American constitutional government. On the other hand, military power may lawfully be em-

[84] This latter was done in favor of General Jackson years after he had placed New Orleans under "martial law." Bassett, *Life of Andrew Jackson*, 745.

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ployed to secure to the people the promise of ordered liberty. It is greatly to be desired that views on this subject be clarified, to the end that the citizen may know the extent of his rights and that civil and military authorities may know the limitations of their powers.

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PUBLIC LAW IN THE STATE COURTS IN 1927-1928

ROBERT E. CUSHMAN

Cornell University

DEPARTMENTS OF GOVERNMENT

I. THE LEGISLATURE

Special Session—Power to Propose Constitutional Amendments Not Included in Governor's Call. In 1926 a special session of the Pennsylvania legislature proposed an amendment to the state constitution in the form of a new section, although the subject-matter of this amendment was not referred to in the governor's proclamation calling the session. In a taxpayer's action to prevent the submission to the people of this proposal it was alleged that the proceeding was in violation of Art. 3, Sec. 25, of the constitution of Pennsylvania, which provides: "When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session." In Sweeney v. King[1] the state supreme court held that a resolution proposing a constitutional amendment is not "legislation" within the meaning of this clause. In reaching this conclusion it relied heavily upon its earlier decision in Commonwealth v. Griest[2] in which it had held that a constitutional amendment is not "legislation" which must be submitted to the chief executive for his approval, a doctrine well established both in state and federal courts. An opposite result on the principal question was reached by the supreme court of California in People v. Curry.[3] Here the restriction upon a called session of the legislature was held to preclude the proposal of a constitutional amendment. The purpose of the restriction was declared to be to regulate the duration of the session and keep down expenses, and this purpose, it was held, ought not to be defeated by a strained or highly technical interpretation. While the court recognized that in proposing an amendment the legislature was not legislating in a strict sense, it took the view that it was nevertheless performing a legislative function. Attention may be called in this connection to the impeachment cases, commented upon earlier in this *Review*,[4] in which it was held in

[1] 137 Atl. 178, March, 1927.
[2] 196 Pa. 396, 46 Atl. 505, 1900.
[3] 130 Cal. 82, 62 Pac. 516, 1900.
[4] Vol. xix, p. 574.

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New York[5] and Texas[6] that restrictions upon special sessions similar to that in the Pennsylvania constitution do not prevent such sessions from proceeding, naturally without gubernatorial suggestion, to the impeachment of the governor.

Delegation of Legislative Power. In an advisory opinion the supreme court of Maine[7] declares that no unconstitutional delegation of legislative power is involved in a state statute which is to become null and void upon the repeal or amendment of a federal statute. The act in question was an estates-tax law designed to obtain the credit allowed under the federal Revenue Act of 1926.[8] This was to become void if Congress repealed the federal estates-tax law or repealed the provision for credit of taxes paid to the several states not exceeding eighty per cent of the tax now imposed.

Initiative and Referendum. A freak result is reached under the direct legislation provisions of the constitution of Nevada in the case of Tesoriere v. Second Judicial District Court[9] holding the three-months divorce law of Nevada passed in March, 1927, not subject to referendum. The referendum in Nevada may be invoked upon acts passed by the legislature upon the filing of a ten per cent petition. If the act is adopted it may not be overruled, annulled, set aside, suspended, etc., save by direct vote of the people amounting to a majority of those voting at a general state election. The clauses dealing with the initiative provide for the indirect type, set in action also by a ten per cent petition, whereby the initiated measure goes first to the legislature. If passed, it becomes law, subject to referendum petition; if rejected or ignored by the legislature, it must be submitted to the people. The legislature, if it rejects the measure, may submit a different proposal dealing with the same subject, which is presented to the voters in competition with the initiated bill. To become law, an initiated act needs a majority of the votes cast upon it. When passed, it cannot be annulled, set aside, or repealed by the legislature within three years.

In 1920 an initiated measure dealing with marriage and divorce went to the legislature, which rejected it and submitted a substitute establishing a six months' residence for divorce. In a special election

[5] People ex. rel. Robin v. Hayes, 143 N. Y. Suppl. 325 (1913); appeal denied by court of appeals, 106 N. E. 1041.

[6] Ferguson v. Maddox, 263 S. W. 888, 1924.

[7] In re Opinion of Justices, 137 Atl. 50, March, 1927.

[8] Act of Feb. 26, 1926. 44 Stat. at L. 69

[9] 258 Pac. 291, August, 1927.

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in December, 1922, the people rejected the initiative proposal and adopted that of legislative origin. In 1927 the legislature amended this act, as above noted, by reducing the residence period for divorce to three months. It was the attempt to subject this act to referendum that was blocked by the decision under discussion. The act of 1922, being an initiated law, i.e., enacted under the clauses governing the initiative, could be amended by the legislature after three years. The amendment of such an initiative act is not subject to referendum, since by the adoption of the initiative it is not the intention of the people to curtail the power of the legislature over initiated measures except in such manner and to such extent as is expressly stated in Sec. 3. In other words, the three-months divorce law could be passed by the legislature, since it was technically a mere amendment to an initiative measure, and it could not be subjected to referendum, since it did not fall technically in the closely defined class of measures to which the referendum is made applicable. Thus under a system supposed to afford the maximum measure of popular control we find the legislature able to undo the work accomplished by a direct popular vote, while the people themselves are denied all opportunity to pass judgment on such action.

II. THE COURTS AND JUDICIAL POWER

Requirement of Extraordinary Majorities for Invalidating Statutes. Two more cases have been added to the list of those in which Ohio statutes have been held valid by a minority of the supreme court of the state. It will be remembered that the constitution of Ohio has, since 1912, contained the stipulation, "No law shall be held unconstitutional and void by the supreme court of the state without the concurrence of at least all but one of the judges," except when the court of appeals has also held the act void.[10] Those who favor Senator Borah's proposal to forbid the Supreme Court of the United States to invalidate acts of Congress unless seven of the nine justices concur will do well to study with care the actual operation of the Ohio rule. In State ex rel Jones v. Zangerle,[11] we have a state law increasing the compensation of common pleas judges for services rendered outside the counties in which they are elected held valid. Three judges believed it valid; four believed it invalid. The opinion of the court is

[10] Art. 2, Sec. 4.
[11] 159 N. E. 564, December, 1927.

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written by one of the three judges. It ends with the comment: "While members of this court deplore such a constitutional provision—one which permits judicial control over grave constitutional questions by a minority vote—the fault lies, not in the court, but in the constitutional provision which produces such a result." Even more confusing results arose in the case of Fullwood v. City of Canton,[12] which involved the validity of a municipal ordinance previously sustained by the court of appeals. Only two members of the state supreme court believed the ordinance valid; five members believed it invalid. Three judges held that the rule requiring the concurrence of all but one judge to invalidate a law applies to municipal ordinances as well as to statutes; four judges held that the rule is inapplicable to municipal ordinances. But two of these four judges were the two who believed the ordinance valid, and they could not, therefore, consistently join in a judgment of reversal. Accordingly, to quote the *per curiam* opinion handed down: "There being more than one member of this court holding the ordinance to be constitutional, and there not being as many as four members of this court who hold that an ordinance is not a law, who are at the same time concurring in a judgment of reversal, it follows that there is an insufficient number of judges concurring upon the points of law necessary to a reversal, and the judgment of the court of appeals must be affirmed." Other cases of statutes held valid by minority votes of the Ohio[13] and North Dakota[14] courts have been referred to previously in the *Review*.[15]

Declaratory Judgment. A unique illustration of the practical utility of declaratory judgment legislation is afforded by the Virginia case of Moore v. Moore.[16] Some doubt had been expressed by the attorney-general of the state as to the legality of an increase of $1,000 in the compensation of Moore, the state auditor. Unwilling to determine the question of his own compensation, Moore sued under the declaratory judgment act for a mandamus to compel himself as auditor to issue a warrant to himself as a state employee. The court held the proceeding a proper one under the act and issued the mandamus.

Partial Invalidity of Statutes. An apt statement of the familiar doctrine governing the severability of a statute part of which is in-

[12] 158 N. E. 171, March, 1927.
[13] Barker v. City of Akron, 121 N. E. 646, 1918.
[14] Daly v. Beery, 178 N. W. 104, 1920.
[15] Vol. xv, p. 409.
[16] 137 S. E. 488, March, 1927.

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valid seems worth quoting from the case of City of Milwaukee v. Diller.[17] The void portion of the act may be deleted "unless it was an inducement for the enactment of the rest."

Contempt of Court. Several cases of contempt of court may be noted, not because they announce new principles, but because they throw light upon the wide and varied scope of this highly important judicial power. In State v. Shumaker[18] the superintendent and attorney of the Anti-Saloon League of Indiana were held guilty of contempt of the state supreme court in publishing and circulating pamphlets and periodicals attacking the court and its judges as being under the influence of the liquor interests. The matter in question contained, among other things, the statement, "We hope the next election will give us a supreme court that will be dry and not wet." This was deemed not only an assault upon judicial integrity and dignity but also an attempt to undermine popular confidence in a body before which some hundred liquor cases were at the time pending. A very long opinion is written to establish the guilt of the defendants and also to clear the court of the charges which had been made against it.

In the case of In re Stolen[19] a petition in the nature of a plea for clemency filed by a local bar association in behalf of a former judge shown guilty of highly questionable practices and disbarred as a result was excoriated by the supreme court of Wisconsin as an undue and reprehensible attempt to influence the court in the exercise of its judicial discretion. While called by its authors a brief filed *amici curiae*, the court deemed the document merely a sentimental appeal throwing no light upon the facts or the law involved. "If sixty members of the bar," declared the court, "may thus petition the court with reference to matters pending before it, then sixty plumbers cannot be denied the same privilege." The term contempt of court was not actually used, although there can be no doubt as to the court's meaning. No punishment was imposed. The idea that freedom of speech or petition was impaired was rejected.

In Ex parte Sturm,[20] a newspaper reporter was held guilty of contempt of court for deceitfully surrendering a blank plate when ordered by the court to give up a picture, taken in the court room, of a prisoner on trial for murder. The picture had been taken immediately before

[17] 216 N. W. 837, December, 1927.
[18] 157 N. E. 769, August, 1927.
[19] 216 N. W. 127, November, 1927.
[20] 136 Atl. 312, January, 1927.

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the trial judge issued his order barring the taking of such pictures in the court room. It was later published in a daily newspaper. There was held to be no impairment of legitimate freedom of the press in this action.

CIVIL RIGHTS

I. RIGHTS OF PERSONS ACCUSED OF CRIME

Ex Post Facto Laws. Is a constitutional amendment ex post facto as applied to a prior offense which reduces the size of the grand jury from twenty-one to twelve and permits indictment by eight of the twelve in place of twelve of the twenty-one? The supreme court of New Mexico in State v. Kavanaugh[21] held not. The important question is whether the defendant had any substantial right at the time of the crime which the amendment took away from him, and the court concluded that he had none. "It is not clear," said the court "how he has been placed at any disadvantage" by the change in the composition of the grand jury. It did not change his acts from innocent to criminal; it did not augment his crime, change the punishment for it, or alter the legal rules of evidence to his detriment. The court relies heavily upon Hallock v. United States,[22] decided in the federal circuit court of appeals, which declared that the right to be indicted by a grand jury does not relate to any particular number, and that the empanelling and precise number of jurors are procedural matters. A dissenting opinion in the Hallock case pointed out that under the change fewer would need to dissent from the indictment to block it than before, an argument which had seemed valid to the Supreme Court of the United States in considering the analogous reduction in the number of trial jurors necessary to a verdict in Thompson v. Utah.[23] Nor is this argument met by the statement of the court in the present case that "if it be said that there is a smaller number from which to secure dissenters it will be observed that five is a smaller percentage of twelve than ten is of twenty-one."

Jury Trial. In Weaver v. Cuff[24] a South Dakota statute specifically authorized by a state constitutional provision and permitting a civil jury to render a verdict by a vote of ten out of twelve is upheld. The allegation that the Seventh Amendment is violated is rejected under

[21] 258 Pac. 209, May, 1927.
[22] 185 Fed. 417, 1911.
[23] 170 U. S. 343.
[24] 216 N. W. 600, December, 1927.

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the doctrine of Barron v. Baltimore.[25] Then the interesting point is urged that a verdict by less than twelve jurors is incompatible with a republican form of government. Curiously enough, instead of dismissing this argument as inapposite under the firmly established doctrine of the Supreme Court of the United States in Pacific States Tel. & Teleg. Co. v. Oregon[26] that the question whether a state government is republican in form is political and not judicial, the South Dakota court proceeds to argue the question on its merits. It holds that a trial by jury is not an essential element of a republican form of government. This is shown by the fact that in England, under a monarchical form of government, there is trial by common law juries in civil cases, while in France, under a republican form of government, there is no jury trial in civil cases. This reasoning is commended to those students of political thought who have been interested in determining the nature of a republican form of government.

Due process in Criminal Procedure. A phase of the famous Baumes laws of New York, enacted in 1926, came under review in People v. Gowasky.[27] The act provides for the imposing of heavier penalties for third and fourth felonies, fourth offenders being sentenced to life imprisonment. The rule that heavier punishment may be meted out to those previously convicted of felonies had long been law in New York. But in People v. Sickles,[28] it had been held that the state not only must allege such previous convictions in the indictment but must prove them on trial in order to convict the defendant as a second offender. The Baumes Act made it unnecessary to charge previous convictions in the indictment or to prove them at the trial. They could be alleged after conviction and made the basis of sentence. The defendant may admit such convictions. If he does not do so, they must be proved before a separate jury. In this case the trial judge failed to inform the defendant of his right to a jury trial on the question of his identity as the basis of showing previous convictions. This is held, however, to be waived by his admission of identity and previous conviction, and no denial of due process of law is found. The defendant had been induced to plead guilty to a lesser degree of burglary than that charged in the indictment, on the supposition that he would receive a lighter sentence, and then found himself sentenced to life imprisonment on

[25] 7 Peters 243.
[26] 223 U. S. 118.
[27] 155 N. E. 737, February, 1927.
[28] 156 N. Y. 541, 51 N. E. 288, 1898.

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the basis of his six previous convictions. While cautioning prosecuting officers against making such false or mistaken representations in the future, the court held that the trial judge was without discretion in the imposition of sentence. The fact that the sentence of life imprisonment for fourth offenders works apparent injustice and hardship in particular cases is declared to present no constitutional question.

II. RELIGIOUS EQUALITY—SECTARIAN SUPPORT

Two cases raised the question of the validity of a rule requiring the reading of the King James version of the Bible in the public schools. In Kaplan v. Independent School District of Virginia,[29] the Minnesota supreme court, following the weight of authority, holds that compulsory Bible reading without comment, from which pupils may upon request be excused, does not impair religious equality nor involve sectarian support. A dissenting opinion emphasizes the stigma which is bound to attach to children excused under such circumstances. In the Colorado case of Vollmar v. Stanley,[30] the Bible reading without comment was upheld, but a rule forbidding pupils to withdraw during such reading was held void on the ground of violation of the Fourteenth Amendment. Relying upon the cases of Meyer v. Nebraska[31] and Pierce v. Society of Sisters,[32] the court declared that the "right of parents to select within limits what their children shall learn is one of the liberties guaranteed by the Fourteenth Amendment. . . . . It follows from the above that children cannot be compelled to take instruction not essential to good citizenship, and so, unless we hold the reading of the King James Bible to be such [which the court is unwilling to do], we cannot say that the board had power peremptorily to require attendance upon it." The implications of this last statement with reference to the control of school authorities over a school curriculum are very interesting.

In the Pennsylvania case of Collins v. Martin[33] an appropriation of $1,000,000 to pay for medical treatment of indigent sick or injured in hospitals not owned by the state is held to violate the state constitutional prohibition against appropriating state funds "for charitable, educational, or benevolent purposes, to any person or community or

[29] 214 N. W. 18, April, 1927.
[30] 255 Pac. 610, May, 1927.
[31] 262 U. S. 390. See comment in this *Review*, vol. xviii, p. 69.
[32] 268 U. S. 510. See comment in this *Review*, vol. xx, p. 98.
[33] 139 Atl. 122, June, 1927.

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to any denominational or sectarian institution, corporation, or association." The attack here made was on the payment to the St. Agnes Hospital, a Catholic institution, of three dollars per day for care extended under the terms of the act. The fact that the payment is in reality compensation for services which the state would otherwise need to extend or pay for directly does not answer the objection that the money actually goes to an institution under sectarian control. In an earlier case, Collins v. Kephart,[34] appropriations made directly to sectarian hospitals with the same end in view was held void for the same reasons.

THE FOURTEENTH AMENDMENT

I. EQUAL PROTECTION OF THE LAWS

Race Discrimination. An Atlanta ordinance forbade colored barbers to serve white women, white girls, or white children under fourteen years of age, and provided fine or imprisonment as a penalty for violation. This is held in Chaires v. City of Atlanta[35] to be a denial of due process of law and of the equal protection of the laws. The ordinance cannot be justified on the theory underlying the usual race segregation laws in the South. The contention urged in its support that a large percentage of the colored race are afflicted with a highly infectious disease does not support a classification which is based, not upon the existence of disease, but upon race and color. Under such a rule, colored barbers free from disease are arbitrarily denied the right to engage in a legitimate and useful occupation.

Negroes and whites in the city of Dallas, Texas, entered into agreement as to the residence of members of the two races in certain parts of the city. Thereupon the board of commissioners of the city passed an ordinance punishing the breaking of this agreement by a fine of from five dollars to two hundred dollars per day for each day the premises in the district are occupied in violation of the agreement. In Liberty Annex Corporation v. City of Dallas[36] the Texas court of civil appeals held the penal provision of this ordinance void under the doctrine of Buchanan v. Warley,[37] while the agreement itself was good under the theory of Corrigan v. Buckley.[38] In City of Dallas v. Liberty

[34] 271 Pa. 428, 117 Atl. 440, 1921.
[35] 139 S. E. 559, September, 1927.
[36] 289 S. W. 1067, December, 1926.
[37] 245 U. S. 60.
[38] 271 U. S. 323. See comment in this *Review*, vol. xxi, p. 80.

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Annex Corporation[39] the Texas commission of appeals held that the ordinance could not in any case apply to land not covered by the agreement, and that the agreement was enforceable by civil process, even though its breach could not be punished as a criminal act.

In Rice v. Gong Lum[40] the supreme court of Mississippi had held that no denial of equal protection of the law was involved in an act which required a Chinese pupil to attend a negro school. This has been affirmed in Gong Lum v. Rice[41] by the Supreme Court of the United States. In the recent case of Bond v. Tij Fung[42] such segregation of Chinese pupils is alleged to violate the Burlingame treaty of 1868 by which Americans and Chinese are reciprocally guaranteed the privileges of the public educational institutions" which are enjoyed in the respective countries by the citizens or subjects of the most favored nation." This is not dealt with by the court, since it was not properly pleaded. It seems clear, however, that the contention is groundless. Under the Mississippi act Chinese subjects are accorded the same rights as negroes who are American citizens, and it would seem difficult from the clause of the treaty to argue that Chinese subjects are entitled to privileges which may lawfully be denied to American citizens. Objection is made in the present case that the schools for negroes are much inferior to those for white children, that the negro teachers are not so able and the instruction not so good, and that this amounts to a denial of the equal protection of the law on a showing of facts not presented in the earlier case. To this the reply is made: "We belong to that class of people who believe that no two things are created exactly alike. Things are similar to each other. So it is with the schools. They have a similarity, but it is certain that no two schools in Mississippi or any other state are exactly alike. The testimony of the county superintendent of education in this case shows that equal facilities are furnished the two races, white and colored, and in our opinion that is all that is required under the Fourteenth Amendment."

In Applegate v. Lum Jung Luke[43] the alien land law of Arkansas, similar in its provisions to the laws of the Pacific coast states,[44] was

[39] 295 S. W. 591, June, 1927.
[40] 104 So. 105. 1925.
[41] 275 U. S. 78.
[42] 114 So. 332, October, 1927.
[43] 291 S. W. 978, March, 1927.
[44] These cases were discussed in this *Review*, vol. xix, p. 60.

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found unconstitutional, not because of any federal constitutional disability, but because it violated a unique provision in the constitution of the state to the effect that "no distinction shall ever be made by law between resident aliens and citizens in regard to the possession, enjoyment or descent of property."

Equal Protection and the Police Power. That a classification established in the exercise of the police power and valid when made may become void as a result of change of circumstances is established in Vigeant v. Postal Telegraph Cable Co.[45] A Massachusetts statute of 1851 established an absolute liability in damages to a person injured in person or property by the poles, wires, or other apparatus of telegraph companies. The act was admittedly valid when enacted. The defendant successfully contends that this now involves a denial of the equal protection of the laws, since no such liability is imposed on telephone, electric light, power, and street car companies which have since come into existence.

State v. Shady[46] involves the validity of a criminal prosecution under a statute forbidding the stealing of electric current by tapping wires owned by corporations. The fact that wires owned by others than corporations are not included does not make the classification void. "A statute for the protection of a particular class is not void simply because the specified class is not all-inclusive or might have been enlarged so as to include others equally meriting the same protection."

An interesting, though by no means new, problem of classification is dealt with in the Wisconsin case of Sammarco v. Boysa,[47] sustaining an ordinance forbidding the keeping of automobiles in wooden buildings under specified conditions, but excepting certain classes of existing garages from the operation of the rule. In several states, ordinances of this kind have been held void on the ground of the denial of the equal protection of the laws, because the existing garage is given an immunity denied to those not yet built. The court in the present case holds valid the placing of existing and future buildings in separate classes, since in the case of the former the investment has already been made and the loss arising from the prohibition will consequently be greater than in the latter case. Attention is called to the fact that ordinances creating zones against wooden buildings are

[45] 157 N. E. 651, July, 1927.
[46] 136 Atl. 26; same case 138 Atl. 777, October, 1927.
[47] 215 N. W. 446, October, 1927.

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always prospective, as are the public regulations dealing with plumbing and electric fixtures. The same principle applies to regulations of building heights. Says the court: "To assert that the ordinance here under consideration denies the equal protection of the laws would not only defeat the purpose of zoning laws in general, but it would amount to a declaration that society is powerless to prevent the growth and development of an evil without completely stamping out the evil."

While the police power may properly require the licensing and registration of engineers as a protection against fraud and incompetence, a statute requiring such licensing of Pennsylvania engineers, but exempting those not resident in the state and having no place of business in the state, and also officers and employees of corporations engaged in interstate commerce, establishes an arbitrary and unconstitutional classification. This is held in the case of Commonwealth v. Humphrey.[48]

Two cases hold that laws forbidding the sale of patent medicines in the original packages by any except registered pharmacists involve arbitrary discrimination against unregistered vendors when the sale of such patent medicines by authorized druggists remains free from any police regulations. The South Dakota court in State v. Wood[49] declares: "It would seem to be an unreasonable exercise of the police power to limit sales to the profession without requiring anything of the profession to safeguard the public health." In the Arizona case of State v. Childs[50] there is a careful review of the conflicting authorities on this point, and the conclusion is reached that the "attempted regulation on its face apparently has no effect except to grant a monopoly of the sale of certain articles to a special class under conditions which can in no manner benefit the public." Both opinions agree that the restriction involved would be permissible if any duty or responsibility was imposed on the registered pharmacists in respect to the sale of patent medicines.

An Arkansas game law which restricts resident licenses to hunt and fish to citizens having the qualifications of voters is held in State v. Johnson[51] to involve an arbitrary classification. The defendant had been a citizen of the state for several years, but had never paid a poll

[48] 136 Atl. 213, January, 1927.
[49] 215 N. W. 487, October, 1927.
[50] 257 Pac. 366, June, 1927.
[51] 291 S. W. 89, February, 1927.

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tax. The qualifications for voting are held to have no relation to the purpose of the classification which is here set up. The classification is "devoid of rhyme, reason, or justice."

Miscellaneous Classification. An Oregon act provided that only persons owning more than five thousand square feet of land may vote to determine whether a tunnel district shall be formed. Upon the formation of the district, bonds were to be sold which should be a lien on all lands within the district, and all such lands were to be taxed according to their assessed valuation. This discrimination in respect to the right to vote is held arbitrary and void in the case of In re Oregon Tunnel District No. 1.[52] If the tax was to be levied upon the basis of the land areas, the classification might conceivably be reasonable, but since the taxes are laid according to value the classification is unreasonable. The fact that the result of the election in the present case would have been the same had all the owners barred from voting been allowed to vote does not save the act, since the discrimination is a continuing one which would apply in future elections.

A Tennessee act of 1923 required, under penalty of fine, persons in specified counties who owned wagons and teams to furnish them four days annually for service on the county roads. The plaintiff in error was imprisoned for failure to pay the fine imposed for non-compliance. He attacked the law as discriminatory because no requirement to furnish services was imposed on those possessing one-horse wagons, automobiles, or trucks, or on those residing in towns. The court in Williams v. State[53] held the classification reasonable and rejected the contention that imprisonment for failure to pay a fine constitutes imprisonment for debt. A statute in similar terms had been upheld against a more general attack in Galloway v. State,[54] commented on previously in the *Review*.[55]

II. DUE PROCESS OF LAW—THE POLICE POWER

Of the numerous cases decided in the state courts during the past year involving the application of the due process test to the legislative exercise of the police power, a few of the more striking may be

[52] 253 Pac. 1, February, 1927.
[53] 293 S. W. 757, May, 1927.
[54] 139 Tenn. 484, 202 S. W. 76, 1918.
[55] Vol. xii, p. 475.

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commented on. Individually, they are of small importance. Viewed as interesting samples, they throw light upon the range of legislative ingenuity and upon the variety in the method of judicial approach to this always important problem.

Perhaps the most interesting case of the group is that of John F. Jelke Co. v. Emery,[56] in which the supreme court of Wisconsin, after a careful analysis of state and federal authorities, holds unconstitutional a state statute forbidding the manufacture and sale of oleomargarine. The statute forbade the manufacture or sale of "any article, product, or compound which is or may be used as a substitute for butter and which is made by combining with milk or milk fats or any of the derivatives of either any fat, oil, or oleaginous substance or compound thereof other than milk fat." This amounts to a complete ban on all oleomargarine, since it is agreed that no commercial product has been, or can be, made which does not contain some milk. The court takes judicial notice of the fact that oleomargarine is a wholesome and nutritious food, and not harmful. State administrative authorities testify that no complaints have been filed indicating that it has been fraudulently sold as butter. With more frankness than has characterized counsel in the earlier oleomargarine cases, it was urged in favor of the law that it was necessary in order to protect the Wisconsin dairy industry from unfair competition. To this the court replied that it had supposed that the state constitution was devised to prevent the legislature from doing just that sort of thing. Such protection of the dairy industry is no more legitimate than would be a prohibition of the sale of sheep to protect the beef-cattle industry or a ban on cement as an aid to the lumber trade. It seems obvious that had this been a case of first impression the court would have felt small compunction in invalidating the act. It is, however, confronted with the case of Powell v. Pennsylvania,[57] decided in 1885, in which the Supreme Court of the United States upheld a Pennsylvania statute of almost identical terms. In an interesting analysis of this and later federal cases dealing with restrictions on the oleomargarine business the Wisconsin court reaches the conclusion that the Powell case, which assumed oleomargarine to be usually unhealthful, has been virtually overruled by later cases, Schollenberger v. Pennsylvania,[58]

[56] 214 N. W. 369, June, 1927.
[57] 127 U. S. 678.
[58] 171 U. S. 1.

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and Collins v. New Hampshire,[59] which assume that oleomargarine need not necessarily be harmful and that only that which is actually unwholesome or deceitfully colored may be excluded or proscribed. The Powell case "remains authority only for the proposition that the manufacture and sale of adulterated, unhealthful, deleterious articles may be prohibited."

In Young v. Mall Investment Co.[60] an ordinance of the city of Minneapolis is held void which requires the owner of land who excavates it to protect adjoining land and buildings from falling in. At common law the right of lateral support applies only to land and not to buildings on it.[61] To make the adjoining owner protect the adjacent buildings would place a heavy burden on property. A lot owner, by erecting heavy buildings, could abridge his neighbor's use of his own land, and thus the rights of the prior occupant would be superior to those of the latter.

The supreme court of Maryland, in Spann v. Gaither,[62] holds arbitrary and unreasonable a regulation making it a misdemeanor for laundries to collect or deliver laundry between midnight Saturday and six in the morning on Monday, in so far as it applied to the early hours of Monday. No legitimate police power object is apparent to justify such a restriction. In Seattle v. Ford,[63] a Seattle ordinance forbidding the hawking of merchandise on private premises without the payment of a license fee of ten dollars a day is held an arbitrary restraint of property rights. As applicable to streets and public places, however, the regulation is reasonable. Of similar import is the case of Balesh v. City of Hot Springs,[64] in which the supreme court found wanting in due process an ordinance, authorized by statute, entirely forbidding the sale of goods by auction.

In Little v. Smith[65] a Kansas statute prohibiting the advertising of cigarettes in any newspaper or periodical published and sold in the state was held void as a denial of due process, as a burden on interstate commerce, as a denial of the equal protection of the laws, and as an abridgment of the privileges and immunities of citizens in the several

[59] 171 U. S. 30.
[60] 215 N. W. 840, October, 1927.
[61] Transportation Co. v. Chicago, 99 U. S. 635.
[62] 136 Atl. 41, January, 1927.
[63] 257 Pac. 243, June, 1927.
[64] 293 S. W. 14, April, 1927.
[65] 257 Pac. 959, July, 1927.

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states. It seems doubtful to the writer whether the comity clause of the federal constitution can properly be invoked in a case like this to guarantee to the citizens of a state an equality of privileges and immunities with those enjoyed by the citizens of the other states. The purpose and application of that clause are rather to prevent a state from denying to citizens of other states the privileges and immunities incident to its own citizenship.

An Illinois decision, Doe v. Jones,[66] holds that no legitimate police power purpose is served by a requirement that land surveyors, governmental employees excepted, be licensed. Unlike the professions of architecture and structural engineering, the land surveyor does nothing affecting public safety. In Bettey v. City of Sidney [67] an ordinance of a Montana city is held wanting in due process which prohibits the repairing of any frame building, within certain zones, which has been damaged to the extent of thirty-five per cent of its assessed value.

While recent decisions have placed the power of municipalities to establish reasonable zoning restrictions upon a firm basis,[68] such regulations may not be altered arbitrarily to the detriment of vested interests without denial of due process. This was held by the Supreme Court of the United States in Dobbins v. Los Angeles[69] in 1913, and the same doctrine is applied by the Illinois court in Western Theological Seminary v. City of Evanston.[70] A zoning ordinance adopted in 1921 established a zone in which only single-family dwellings, churches, schools and colleges, etc., were permitted. In 1923 the Western Theological Seminary acquired a tract in this district, sold its previous site, and conducted a successful financial campaign for funds to build a chapel, library, assembly room, student dormitories, etc. Permits to erect these buildings were held up, and finally in 1925 the city council amended the zoning ordinance so as to exclude "temples, libraries, schools, and colleges" from the district. While the exclusion could undoubtedly have been effected in the first place, to bar the seminary buildings now, after interests have vested, cannot be defended as an exercise of the police power. No menace to health, comfort, or safety requiring the change can be shown.

[66] 158 N. E. 703, October, 1927.

[67] 257 Pac. 1007, May, 1927.

[68] See Euclid v. Ambler Realty Co., 272 U. S. 365, commented on in this *Review*, vol. xxii, p. 94.

[69] 195 U. S. 223.

[70] 156 N. E. 778, April, 1927.

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A Texas statute regulating transactions in real estate and corporate stocks provided: "Whenever a promise . . . . has not been complied with by the party making it within a reasonable time, it shall be presumed that it was falsely and fraudulently made, and the burden shall be on the party making it to show that it was made in good faith but was prevented from complying therewith by the act of God, the public enemy, or by some equitable reason." The act is held in Clem v. Evans[71] to be wanting in due process because it does not permit rebuttal of the presumption of fraud except by the limited method of showing that compliance with the promise was impossible. The court takes the view that it is only the insincerity of the promisor's promise when made that makes his act fraudulent, and that proof of that lack of intention to defraud must be a complete defense. The Texas commission of appeals recognizes that the Supreme Court of the United States in the recent case of James-Dickinson Farm Mortgage Co. v. Harry[72] has taken the opposite view, but it urges that the doctrine announced was not necessary to the decision, and also that the Supreme Court construed the act before it as creating a presumption which could be adequately rebutted.

In Solomon v. City of Cleveland[73] an ordinance forbidding fortune-telling was held not to violate the Fourteenth Amendment. It was urged also that the ordinance impaired the freedom of speech and press guaranteed by the First Amendment to the federal Constitution. The Ohio court of appeals, which decided the case, adopts with approval the opinion of the trial judge, who assures us that "it has never been held that such provision [the First Amendment] extends to the privilege of publishing and disseminating baneful and harmful matter," in support of which the case of Ex parte Rapier[74] is cited. It may be noted that the undergraduate is not the only one who finds difficulty in applying the doctrine of Barron v. Baltimore[75] to pertinent situations.

Of the decisions in which police-power measures are sustained, the most notable is that of Campbell v. City of New York.[76] This was a taxpayer's action to restrain the city from making contracts for

[71] 291 S. W. 871, February, 1927.
[72] 273 U. S. 119.
[73] 159 N. E. 121, July, 1926.
[74] 143 U. S. 110.
[75] 7 Peters 243.
[76] 155 N. E. 628, February, 1927.

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subway construction which were alleged to be wasteful and illegal. The contracts in question were made in compliance with a law requiring that they should stipulate an eight-hour day and the payment of wages "not less than the prevailing rate for a day's work in the same trade or occupation in the locality. . . . . " A violation of these provisions is made punishable by fine or imprisonment, in addition to the forfeiture of the contract. It is alleged that the terms are vague and uncertain, that bids cannot be made with understanding and will have to be made higher as a protection, and that waste of public money will of necessity result. The invalidity of the statute under the doctrine of Connally v. General Construction Co.[77] is especially urged. In an opinion written by Judge Cardozo the law is held valid. The decision confines itself to the portion of the statute regulating the terms of the contracts. There is no requirement of due process of law that municipal contracts "shall be perspicuous and definite." "It is a novel doctrine," the opinion continues, "that there is constitutional immunity against contractual obligations that are ambiguous or doubtful." Whether the Connally case would prevent the criminal action provided for breaking the terms of the contract need not be determined in this case, but the suggestion is made that "distinctions of time and circumstance may conceivably exist" which would save the penal provisions of the New York statute.

In the case of In re Cohen[78] it is held that no rights of a lawyer under the Fourteenth Amendment, or under the state constitutional guarantees of freedom of the press, are violated by the enforcement, through suspension from practice, of the canon of ethics of the legal profession forbidding lawyers to advertise. A similar result is reached in Laughney v. Maybury[79] with respect to a law forbidding osteopaths and chiropodists to employ certain advertising methods. A Michigan statute prohibiting the soliciting of personal injury claims—the familiar evil of "ambulance chasing"—is held to be a legitimate exercise of the police power and not wanting in due process. This is the case of Kelley v. Boyne.[80] The claim that the act denies the equal protection of the laws by making the contracts to prosecute personal injury claims void if made with persons who are not lawyers, while such contracts are enforceable if made with lawyers, is rejected by the court. An

[77] 269 U. S. 385, commented on in this *Review*, vol. xxi, p. 86.
[78] 159 N. E. 495, January, 1928.
[79] 259 Pac. 17, September, 1927.
[80] 214 N. W. 316, June, 1927.

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Oregon statute making the cost of fighting forest fires a lien on the land on which the fire started is held no denial of due process, even though the cost so levied might exceed the value of the land. The statute is enforceable against a municipality in one of the public parks of which the fire started. This is the case of State v. City of Marshfield.[81]

EMINENT DOMAIN

In Paine v. Savage[82] a statute passed by the legislature of Maine allowing log-haulers to cross private property without being liable for trespass, but only for actual damage, is held to involve an exercise of eminent domain for a private use and consequently to be void. The doctrine of public use here applied is that which makes that term synonymous with "use by the public"—the doctrine followed in most of the states—rather than the more liberal rule which interprets public use in terms of general public benefit. The same test of public use is applied in Fountain Park Co. v. Hensler,[83] in which the Indiana supreme court refuses to allow the grant of the right of eminent domain to a Chautauqua company for the purpose of acquiring a site. The act involved in this case was also held bad for arbitrary classification, inasmuch as it purported to apply only to any voluntary association organized for the purpose of maintaining a religious Chautauqua which has been in existence for not less than fifteen years, which holds exercises not less than sixteen days a year, and which has a lease on a tract of land of not less than forty acres. "Arbitrary selection," said the court, "or mere identification, cannot be justified by calling it classification."

In Jarvis v. Town of Claremont[84] it is held by the supreme court of New Hampshire that to make the cost of removal of trees blown across the highway a lien against the value of the trees amounts to taking of private property without compensation. In this case the tree was cut into firewood and sold to pay the cost of removal. It made no difference that the tree, without the owner's fault, had become a public nuisance.

IMPAIRMENT OF THE OBLIGATION OF CONTRACTS

A striking illustration of the doctrine that the contract clause of the federal Constitution affords no protection to contract rights against a

[81] 259 Pac. 201, September, 1927.
[82] 136 Atl. 664, March, 1927.
[83] 155 N. E. 465, February, 1927.
[84] 139 Atl. 747, December, 1927.

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reasonable exercise of the police power is afforded by the case of People v. Chicago City Railway Co.[85] In this case a mandamus was issued compelling the company to remove certain of its tracks and trolley poles from their existing location, where they had been placed under the terms of the charter contract, and relocate them so as to conform to the center of the street as widened. The relocation of tracks and poles will cost the company about $300,000. The court holds that this requirement is made in the legitimate exercise of the police power, which extends to measures to promote public convenience as well as health, morals, and safety.

A very unique and interesting application of the contract clause is made in Hessick v. Moynihan,[86] an action brought under the declaratory judgment act of Colorado to test the validity of an act of 1927 forbidding the sale of convict-made goods in competition with free goods. It seems that the state board of correction has been leasing valuable farm lands upon which it carries on a profitable dairy business by convict labor. Recently it bought a canning factory and a vegetable ranch adjacent, from which it is making profits sufficient to pay the purchase price in due time. The revenues which the state will lose by the enforcement of the law in question will amount to about $100,000 a year. One would suppose that the policy to be followed in the management of the state's penal institutions would be deemed so preëminently a governmental interest to be dealt with in the exercise of the police power that no case could successfully be maintained against the law based on the impairment of contracts. Such, however, is not the fact. The court holds that the enforcement of the law will require the cancellation of leases with third persons, and will entail inability to make payments on the canning plant, which was bought on the understanding that it would be paid for from profits; consequently the act is void as impairing the obligation of these contracts.

[85] 155 N. E. 781, December, 1926.
[86] 262 Pac. 907, December, 1927.

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LEGISLATIVE NOTES AND REVIEWS

EDITED BY CLYDE L. KING
University of Pennsylvania

Governors' Messages, 1928. It is hardly possible to compile a summary of these messages which will present an entirely fair picture of the separate and complete documents, or of the attitudes of their authors. The novel recommendation, or the out-of-date recommendation—the first trial of the new or the last laying aside of the old—tends to attract attention at the expense of the customary, routine, though perhaps equally important, recommendation. A description of the performance of some state function or an elaborate presentation of the needs of some state institution will ordinarily receive little or no comment, while a precise, definite, concrete, though brief, recommendation is apt to be included. This report seems likely to bear somewhat the same relation to the messages that news bears to life.

The messages of the following governors, delivered to regular sessions of the legislature this year, are reviewed: Flem D. Sampson of Kentucky, Alvan T. Fuller of Massachusetts, Theodore G. Bilbo of Mississippi, A. Harry Moore of New Jersey, Alfred E. Smith of New York, Aram J. Pothier of Rhode Island, John G. Richards of South Carolina, and Harry Flood Byrd of Virginia. Besides, the regular messages of Governors John W. Martin and L. G. Hardman to the legislatures of Florida and Georgia, respectively, in April and June of last year, are included. Special legislative sessions were convened last year or this in at least nine states, and note is taken of the messages addressed to these assemblies in Arizona, Illinois, Iowa, Nevada, New Hampshire, North Dakota, South Dakota, Virginia, and Wisconsin by Governors George W. P. Hunt, Len Small, John Hammill, F. B. Balzar, Huntley N. Spaulding, A. G. Sorlie, William J. Bulow, Harry F. Byrd, and Fred R. Zimmerman, respectively. The legislature of Louisiana meets regularly in the even years, but not until May.

The messages to regular sessions are, in the main, of routine character. Governor Smith begins: "This is the eighth and last annual message I shall present to your Honorable Bodies." His ninety-nine pages review the changes in the government of the state and in its activities during the ten-year period since his first inauguration in 1918. The record furnishes a background for numerous recommendations. Governor Sampson's address covers twenty-five pages, to which he

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appends a supplement of thirty-five pages containing the suggestions which he has received from state officials, private organizations, and citizens. One third of Governor Bilbo's vigorous one-hundred-nine-page message is devoted to the subject of a state printing plant for school text-books; and the state's financial condition, highways, and education receive generous attention. Governor Byrd's message takes the form of three "addresses" upon the subjects of Virginia's business government, the educational system of Virginia, and "a program of progress."

Machinery of State Government. Proposals for modification of the state governmental organization, either by statute or by constitutional amendment, appeared in eight of the ten regular messages. In Florida, the administrative organization seems still to be in the diversification stage of its evolution, and Governor Martin counsels the separation of an auditing department, a banking department, and a motor vehicle license department from the comptroller's office. Governor Hardman (Ga.) approves departmental consolidation, a single highway commissioner directly responsible to the governor, a four-year term for the latter, and the appointment of a constitution commission. He advised the legislators to recess after the first twenty days of the session for the purpose of studying the problems presented to them. Governor Sampson (Ky.) thinks that "some high-salaried positions about the capitol building held by persons who seldom come to their offices" might be discontinued, inasmuch as the deputies do the work. Once more Governor Fuller urges biennial sessions of the Massachusetts legislature and condemns the appearance of its members as paid counsel before any governmental agency of the commonwealth. Of the elected highway commission of Mississippi, Governor Bilbo says, "We now have no state highway commission, but instead eight district commissioners," who "defeat a coördinated system of highways for the benefit of the whole state." An appointed salaried commissioner, or commission of three, is suggested. He would substitute a state board of charities, mainly appointive, for the present local boards, and stop the practice of unsupervised appropriations to private hospitals. He recommends one central educational authority of eight laymen appointed for overlapping terms of eight years for the purpose of coördinating the higher educational activities of the state with the secondary and elementary schools; this board to appoint a director of higher education of equal rank with the state superintendent of public instruction. A state purchasing agency would, he believes,

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eliminate the greatest waste of the people's money. Governor Moore proposes a constitutional convention for New Jersey and an agency to formulate proposed changes.

Re-submission to the electorate of the question of a four-year term for governor, with election in other than presidential years, is urged by Governor Smith, as well as a constitutional prohibition upon all legislation in even years except that for the support of government, unless specifically recommended by the governor. Appropriations would thus monopolize all attention biennially. State senators' and assemblymen's terms should be increased to four and two years, respectively. "The legislature spends too much time passing bills regulating the size of wall-eyed pike and lobsters, and prescribing by law the manner and method of taking and possessing game, fish, birds, fowl, and the like. All this should be done by rule and regulation of the conservation department." From the same viewpoint, Governor Smith criticizes legislative legalization of local improvement bonds. The constitutional initiative is commended; also a state constitutional prohibition of the ratification of proposed amendments of the federal Constitution until after a state-wide popular referendum. The people of South Carolina have twice declared for biennial sessions of the legislature, says Governor Richards, but faithless legislators have disregarded their wishes.

Primaries and Elections. Elections received attention in eight messages. Governor Martin (Fla.) would increase the maximum legal campaign expenditure permitted to candidates for state office and extend the privilege of the absent-voting law to electors absent from the state on election day. Without any specification other than the holding of a second primary within ten days of the first, Governor Hardman seeks to "eliminate the undesirable and unfortunate conditions" surrounding elections in Georgia. "Elections are too frequent," Governor Sampson apprises the Kentucky solons; "an election every two years is often enough." Restricted election expenditures and the publication by the state of a campaign bulletin commend themselves to Governor Fuller, who notes the "rapidly growing evil of the control of nominations and elections by large campaign expenditures." No one advised of the abuses that have arisen under the Mississippi absent voters law, Governor Bilbo suggests, can oppose its repeal. The direct primary should not be interfered with, thinks Governor Moore; nor should there be, in any degree, a return to the old convention system. Governor Smith would restore the primary to

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state-wide operation in New York and require the publication of campaign expenditures and receipts before, rather than after, election. Governor Pothier informs the lawmakers that many voting districts in Rhode Island contain more than 2,000 qualified voters and asks that the maximum be placed at 1,200.

Taxation and Finance. An "iniquitous measure, passed for no other reason than to nullify Florida's constitution, a gross injustice to the people of the state," is Governor Martin's characterization of the federal inheritance tax. All persons handling the money of the state should be required to pay it promptly into the state treasury, he believes, and thus save the state the sum of $50,000 annually, a recommendation seconded by the governors of Georgia and South Carolina. Governor Hardman calls attention to deficits in the accounts of several Georgia institutions and admonishes the legislature to make adequate provision for the operating expenses of the state. A privilege tax of ten cents a cubic yard upon the sand and gravel taken from the streambeds of Kentucky would pay for school text-books, thinks Governor Sampson. Special service to special groups should be paid for by them rather than by the taxpayers, says Governor Fuller (Mass.), in a proposal to make more of the activities of the state self-supporting. He favors a gasoline tax of not over two cents a gallon. Governor Bilbo (Miss.) would increase the gas tax to five cents. He deprecates a tendency in recent years to postpone current financial obligations and counsels a revision of the laws relating to assessment and taxation, especially the exemption from taxation of all incomes earned in purely agricultural pursuits. After a year's trial, Governor Moore regards the gas tax as inexpedient for New Jersey. Governor Pothier suggests the advisability of imposing the direct state tax in Rhode Island upon the basis of the amount of local taxes rather than local valuation as more equitable and more conducive to uniformity and thoroughness in local valuations. Radical changes in the South Carolina tax system seem unwise to Governor Richards. To operate effectively the present machinery for the valuation of tangible property, and to reach intangible values through an amendment to the constitution which will permit the classification of property for taxation, are the real needs. "Virginia today occupies the fortunate position of being one of the few states in the Union not seeking revenues from new taxation," asserts Governor Byrd. He would repeal the tax of two per cent now laid upon the estate of a non-resident before his property can be transferred to his beneficiaries, and the tax on shares of stock owned by a

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Virginia taxpayer in a non-resident corporation, as well as reduce by ten cents per hundred dollars the tax on capital in business. He notes with satisfaction, as effects of the segregation of state and local revenue, the submergence of friction between localities and an equalization of the tax burden between the local units of the state and the different classes of property.

Education. In the opinion of Governor Martin, all interest on state funds should be set aside as a subvention to those common schools of Florida financially unable to operate for at least six months each year. The supervision of rural schools in New York could be much improved by the introduction of the county unit for this purpose, thinks Governor Smith. In the department of education he would provide a bureau for special schools, and would require the same license prerequisites for teachers in the state institutions as for those in the public schools. Governor Pothier thinks that state assistance in financing schoolhouse construction would largely solve the problem of inequality of educational opportunity in the localities of Rhode Island and the inequality in the tax burden for school purposes. Governor Richards (S. C.) again urges the disbursement of school funds on the basis of average daily attendance instead of on that of enrollment, because the latter places a premium upon padded rolls. Adverting to the reduction of white illiteracy to less than three per cent, he complains that the failure to differentiate between the white people and the negroes in this matter is the cause for the injustice that has been done the state and for gross misrepresentation. Governor Hardman (Ga.) favors education of a practical type and commends the research work being done in the experiment stations and the school of technology. After emphasizing Georgia's illiteracy by comparison with Minnesota's 1.8 per cent, he recommends state assistance for schools in poor counties and an accurate local accounting for school money.

In order to make the text-book commission more responsive to the wishes of the Kentucky taxpayers, Governor Sampson would have its recommendations of changes submitted to popular vote, or to the members of the county school boards, for approval. He urges better free schools for the colored children of the state and a standard college for colored youth. He approves executive appointment of the state board of education and the equalization of educational opportunities by means of state appropriations, showing that a fifty-mill levy in some counties will now provide three dollars per pupil and in other

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counties as much as forty-six dollars. Governor Bilbo (Miss.) favors a teachers' pension fund; also an eight-months' school throughout the state at state expense if necessary. School and road districts should be coterminous with county areas, he believes. He would employ the requisite number of experts, including psychologists, psychiatrists, and social workers, to examine all retarded and maladjusted children in the public schools. More state support for higher education is recommended by Governor Moore, who says that New Jersey is educating a smaller proportion of her citizens in her own colleges and contributing a smaller proportion of state revenues for the purpose than any other state. Governor Byrd would consolidate the duties of school trustees and county supervisors, thus eliminating 801 officials in Virginia.

Law Enforcement and the Administration of Justice. Elimination of delays and reduction of costs in the administration of justice are regarded by Governor Martin as most important objects of legislation in Florida. The necessity of providing a substitute for the justices' courts, whose functioning has been so restricted by decisions of the United States Supreme Court and the highest court of Kentucky, is pointed out by Governor Sampson. Governor Fuller (Mass.) asks legislative consideration of exceptions, appeals, and motions for new trials in capital cases. He wishes to relieve future governors of the "difficulties which were forced upon him in 1927 by zealous defenders of persons convicted of first degree murder." For this purpose he presented a procedural remedy as contained in the recent report of the judicial council. A training school for policemen is proposed, and also the unification of police forces of the commonwealth under state supervision, without unduly interfering with local control. Governor Moore attacks the technicalities of legal procedure and recommends doubling the strength of the state police force of New Jersey. In addition to suggesting the utility of a crime commission for Mississippi, Governor Bilbo proposes that the legislature enact anti-gossip, anti-lying, anti-slander, and anti-libel laws, the remedy in the civil law being altogether inadequate and ineffective to check these evils. He holds that perhaps half of the homicides in the state are caused by encounters resulting from calumny.

Governor Smith presents the novel proposal that persons found guilty in the courts be not sentenced by the judges, but be detained and carefully studied by a board of mental and physical specialists who would fix the penalty—"a modern, humane, scientific" way to

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deal with the criminal offender. That most crime in South Carolina may be charged to whisky and the ever-ready pistol is Governor Richards' conviction; yet violations of laws against "bootlegging" and the carrying of weapons are treated as light offenses. Delays of the courts and inequality of sentences are condemned, and a law against the purchase of liquor is suggested. Governor Sampson laments the disgrace that mob violence has brought to Kentucky, and, insisting that one determined official can stand off a mob, demands a law for the removal of lax officers, if none exists. Governor Byrd says: "Lynching must stop." He asks that it be made a state offense to be prosecuted by the attorney-general, that the county or city which permits a lynching be forced to pay damages, and that the governor be authorized to spend what he deems necessary in apprehending the members of a mob. The governor of South Carolina also denounced lynching.

Local Government. Restriction of the bonding power of localities seems essential to Governor Martin in order to maintain low interest rates and a ready sale at good prices for the securities of Florida municipalities. Governor Smith proposes home rule for New York's counties, towns, and villages, as well as an amplification and simplification of the home-rule statute for cities. He notes the cost of county government in 1926 as $47,991,358. "Reasonable people will admit that if these counties were being set up today, no one would think of dividing the state into sixty-two of them." The return of the control over utility contracts to the municipalities of the state is requested, and the grant to them of power to regulate utilities, with the reservation that in the absence of specific request from a municipality, the power should remain with the state commission. Cities should also be permitted to operate public buses. Governor Pothier (R. I.) suggests a survey of the financial methods of cities and towns with a view to securing to them more complete control over the collection of revenue and the establishment of a uniform system of accounting. Both Governor Smith and Governor Moore praise the accomplishments of the Port of New York Authority. The first issue of its bonds is said to be now selling at a premium of eleven points. Speaking of the Boston Elevated Railroad, Governor Fuller says, "Public control" (which should be continued) "has brought the road up from apparent bankruptcy to good condition and service," the common stock from fifty to ninety-five. Additional subways could be partially paid for by betterment assessments. In response to a request from the gover-

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nor, sixty-nine gas and electric companies voluntarily reduced their rates. The doctrine of reproduction values would be inequitable in Massachusetts. Deprivation of the right of eminent domain, prohibition of the further issue of stock or bonds, and encouragement of municipal competition are proposed as penalties for companies that refuse to subject themselves to reasonable regulation and supervision by the commonwealth.

Conservation and Labor. Governor Smith again proposes a New York state power authority—a public corporation, municipal in character, having no stockholders, empowered to issue bonds exempt from state tax and secured by the improvements made, authorized to develop the water-power of the state, the state retaining the ownership not only of the sources of power but of the development works as well—"the one sure way to get the full benefit of hydroelectric energy for the small storekeeper, the small homeowner, and the people on the farm." No harm can come to the state by a trial. "Nobody can honestly and conscientiously oppose it unless he belongs to that reactionary Bourbon group who are against public ownership or public development of any resources."

Justice to labor in the matter of a fair remuneration is suggested by Governor Sampson (Ky.). Changes in the workmen's compensation laws to lessen the handicap under which aged, crippled, and partially disabled persons now seek employment, due to the feeling of employers that such applicants are more apt to be injured than others, are recommended by Governor Moore (N. J.). In New York the establishment of a minimum wage board for women and minors, with investigative and recommendatory powers, is again proposed, along with the extension to its feasible limit of the one-day-rest-in-seven principle, compensation for all occupational diseases, and the prohibition of temporary injunctions without a preliminary hearing to ascertain the facts. "The use of the big stick in industrial relations is a thing of the past."

Highways. The completion of the primary system of highways is the matter of chief interest to the people of Kentucky, thinks Governor Sampson, who believes that more Kentucky materials may be used in road-building at a saving of freight and that some prison labor may be employed in quarries, gravel pits, and asphalt mines. He urges the condemnation for public use of the toll bridges of the state, which, in some instances, collect in a single year the total cost of construction. To replace certain toll ferries he proposes toll bridges financed with

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mortgage bonds and managed by state officials. Compulsory liability insurance for automobile drivers is commended by Governor Moore (N. J.). Governor Bilbo (Miss.) approves the issue of bonds to the amount of $53,500,000 over a period of four years to build a primary system of hard-surfaced roads and a secondary system of graveled highways. An automobile tag and license should be good for the life of the car, in his opinion, and the gasoline and oil sold in the state should be thoroughly inspected. That the state highway department should offer expert engineering advice to county authorities, that the state road purchasing department should likewise offer its facilities, that a unified county road law be adopted by the state, and that a half-cent be added to the gas tax, are parts of Governor Byrd's (Va.) plans for road improvement. Governor Fuller (Mass.) advises the investigation of fire insurance rates, and also of the rates for workmen's compensation insurance. Governor Bilbo (Miss.) vigorously demands a state-owned plant primarily for printing school text-books, though he just as positively opposes free text-books: "The white people of the state pay most of the taxes, and they do not propose to go to the enormous expense of providing free text-books for the negro children, who are in the vast majority." He also advocates the appropriation of funds to equip a plant for the production of vitrified paving brick for road-building.

Agriculture and Welfare. Additional authority for the bureau of markets in order that it may protect the grades and standards of agricultural products, as well as efficient inspection of food products and especially milk, are considered desirable by Governor Pothier (R. I.); while Governor Bilbo urges a bureau of markets adequately financed to organize all the farmers of Mississippi into one great body. The status of agriculture alarms Governor Richards (S. C.), who declares that cotton cannot be grown profitably under boll weevil conditions by the old methods. Purchasers of land for farming purposes should be exempted from taxes for a period of five years, he believes, in the same manner as manufacturing enterprises were exempted by the last session of the legislature.

Comprehensive state supervision of dams, ten of which gave way during the recent floods in Rhode Island, and a study of water courses, of the capacities of ponds and streams, and of the spillway facilities of dams, were suggested to the lawmakers by Governor Pothier, along with legislation for the enforcement of orders for repairs and alterations where the public safety demands them. Governor Bilbo (Miss.) would

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authorize counties and cities to contribute to the support of widowed mothers, and Governor Smith (N. Y.) would have the state match, with its funds, the local appropriations for child welfare. The former desires a commission of juvenile research to maintain a clinical laboratory, probably at the state capital, and assist the courts, schools, children's institutions, and citizens in the proper handling of defective and delinquent children.

Miscellaneous Subjects. Again Governor Moore recommends the repeal of the New Jersey prohibition enforcement act and the submission of the subject to the people at a "real referendum." Governor Smith holds that the mistake of the legislature of 1919 in failing to submit to popular vote the question of ratifying the Eighteenth Amendment is a considerable factor in the unrest and dissatisfaction apparent in large portions of the state, and a prime cause of disrespect for law. But he declares that there devolves upon the state the sacred duty of sustaining the Eighteenth Amendment and the Volstead law: "they are as much a part of the law of this state as our own statutes and our own constitution." He will remove from office, upon proper proof, any official charged with laxity in enforcing the law. "People of any locality get the degree of law enforcement upon which they insist and for which they are willing to pay."

Governor Sampson declares the subsidized lobbies around the capitol during legislative sessions a menace to free government, with no excuse for existence except selfishness and greed—"the darkest blot upon the fair name of Kentucky." Governor Bilbo (Miss.) warns the lawmakers against the agents of the "American Book Trust" and other predatory interests.

"We cannot have our industries operated so that the employees work fewer hours and earn more money and the employers pay more taxes, and at the same time have the product compete in price with those of other states where the women and children work longer hours, where wages are low, and where taxes are much less," argues Governor Fuller (Mass.) in presenting a fundamental reason for economy.

Mention was made in the messages of the following reports: commission on taxation, in Massachusetts; commission on civil and criminal procedure, in Florida; investigating and budget commission in Georgia; survey of local civil service commissions by the state civil service commission, in New York; and commission to survey the educational system, in Virginia. Governor Byrd, of the last-mentioned state, seems to have made use of no fewer than eleven commissions,

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whose members he commends for their unselfish service to the state.

Extraordinary Sessions. Governor Hunt called a special session of the Arizona legislature in August, 1927, mainly to provide money for the highway department and some twenty other agencies of state government. Nineteen items of legislation were mentioned in the call, all of little interest outside the state. An increase in the salaries of state officers was requested, inasmuch as no change has been made since the admission of Arizona to statehood.

The intention of a circuit court judge to enjoin the operation of the existing direct primary law because of its alleged unconstitutionality induced Governor Small to call the Illinois legislators into special session January 10, 1928. Aside from election matters, little was brought to their attention. The courts seem, in the end, to have saved the primary and rendered the session relatively unprofitable.

For the single purpose of making provision for the repair of the flood damage to roads and bridges, the New Hampshire lawmakers met in extra session in November, 1927. Governor Spaulding recommended that the state assume practically all the burden of the disaster and finance the necessary expenditure by short-time notes later to be taken up by bonds and paid off by means of an increase in the gasoline tax. All these recommendations were adopted at a single day's session.

In May, 1927, a bonding company announced to the Nevada state board of examiners its withdrawal from the bond of the state treasurer. Developments revealed a conspiracy among several officials to defraud the state. The status of the finances thus brought about was one of the reasons for holding the special session which Governor Balzar called for January, 1928. The offenders are now serving terms in the state penitentiary.

A fact-finding committee appointed by the senate of the North Dakota legislature to investigate the operation of the state mill and elevator made several reports. Declaring that these reports were published for no other purpose than to injure the plant and to afford a basis for criticism of his administration, Governor Sorlie chose to lay the facts before the legislature in special session in January, rather than to engage in a newspaper controversy. His message is a concrete consideration of the problems to be met by this state industry. He finds "an impossible situation" in the monthly reports of the mill and elevator auditor and those of the auditor employed by the industrial commission, besides "three separate and complete semi-annual audits." Unfortunately, these reports are conflicting. The governor

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says: "There should be no secrecy in public business, but I urgently recommend that you enact legislation that will give these public enterprises at least a measure of the same protection that private capital enjoys. . . . . To make an auditor's battle a part of our economic and political issues is unsound and altogether ridiculous." He believes that $160,000 can now be paid out of the earnings of the mill toward retirement of the construction bonds. He repeats testimony presented to the Interstate Commerce Commission to the effect that the people of the state are paying $50,000 freight charges annually on dockage of $500,000 food value which goes out of the state. He proposes the erection of another terminal elevator. The profit of the bank of North Dakota for the last year is reported as sixteen per cent. A Federal Trade Commission decision is cited for proof that the Minneapolis chamber of commerce in one year collected more than $57,000 for "educational purposes," that all the propaganda published against the Equity Coöperative Exchange (farmers' agency) was false, that the chamber would order a thousand copies of Fargo papers on condition that they print certain articles furnished by it, and that the chamber succeeded in having its own specially appointed and paid auditing firm selected to audit the books of the Equity for the purpose of discrediting it and securing its dissolution.

Governor Bulow of South Dakota found it necessary to call a special session in June, 1927, because the regular session had passed no appropriation measure. Apparently the governor had vetoed a bill appropriating an amount which he regarded as in excess of the expected income of the state. He frankly and positively informed the lawmakers that the amount of appropriations must be kept within the revenue if they desired his approval, and that how this could be done was a problem for the legislature to work out. Incidentally, the governor proposed the repeal of the money and credits tax, as of doubtful value under a court decision, and suggested that the proceeds of the cigarette tax be permanently appropriated for construction and maintenance of educational institution buildings.

To a special session of the Wisconsin legislature in January, 1928, Governor Zimmerman stated that the totals of appropriations then on the books exceeded the cash balances and expected receipts for the biennium by over seven and one-half million dollars. He, also, had vetoed appropriation bills at the regular session. He reminded the legislature that such measures should be considered before the closing days of the session. The normal schools and the state institutions

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under the board of control especially demand money. He urged the financing by some system of taxation of a continuing building program for the care of dependents, defectives, and delinquents, in which, he declared, twenty thousand families of the state are directly interested.

Upon petition of a majority of the legislators of Iowa, Governor Hammill called a special session in March, 1928, to consider the submission to popular vote of a $100,000,000 bond issue for financing state highway construction, in lieu of a multitude of county bond issues. The state issue is intended to retire $60,000,000 outstanding in county bonds and to be repaid wholly from the proceeds of motor license fees and the gasoline tax.

An extra session in Virginia, in March, 1927, was called mainly to act upon the reports of a commission to suggest amendments to the constitution and a citizens' commission to recommend simplifications in state governmental organization. The latter based its suggestions on a survey conducted by the New York Bureau of Municipal Research. Governor Byrd advised that popular approval be required for local bond issues and that the governor be prohibited from offering a recess appointment to any one who has failed of legislative confirmation. He proposed, in addition, the repeal of a law which permits utilities to put into effect increased rates while a request for such increase is pending before the state corporation commission and the courts, the establishment of apple grades by the state department of agriculture, and a survey of the entire educational system of the state as a basis for legislation.

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AMERICAN GOVERNMENT AND POLITICS

FIRST SESSION OF THE SEVENTIETH CONGRESS
December 5, 1927, to May 29, 1928[1]

ARTHUR W. MACMAHON
Columbia University

Long sessions in presidential years are short ones in the sense that the conventions dictate earlier and more definite limits than even Washington weather invites. Moving to such an end, the recent session could not escape the season's contagion. Yet presidential politics hardly set the tone of the session. Its work had unusual inherent interest. The array of questions before it, mingling economic and technical elements, was indicative of the trend of problems of public policy. It presented the paradox of all Congresses, of course: partisanship in building the machine; eclectic voting or bipartisan combinations in the actual passing of bills.

Membership. The Republican majority in the House had been cut by the 1926 elections and by a party shift in one of five by-elections[2] from 61 to 40—a margin safe enough for purposes of organization,[3]

[1] For notes on the 69th Congress, see this *Review*, vol. 20, p. 604, and vol. 21, p. 297. For notes on earlier Congresses, prepared by Lindsay Rogers, see vol. 13, p. 251; 14, pp. 74, 659; 15, p. 366; 16, p. 41; 18, p. 79; 19, p. 761.

[2] Five deaths occurred before the opening of the session, but a change of party resulted only in the first district of Colorado, where the Democrats gained a seat on what was said to have been the wet issue. At the beginning of Congress the groups were: Republican, 237; Democratic, 195; Farmer Labor, 2; Socialist, 1. Three Republicans—M. B. Madden of Illinois, chairman of appropriations, T. S. Butler of Pennsylvania, chairman of naval affairs, and T. C. Sweet of New York—and one Democrat, J. A. Gallivan of Massachusetts, died during the session. Wood of Indiana and Britten of Illinois succeeded to the important chairmanships. W. R. Green of Iowa resigned to go on the Court of Claims; Hawley of Oregon took his place as chairman of ways and means.

[3] The treatment of James M. Beck is in point. He was chosen in a special election in October to fill Vare's seat on the resignation of the congressman-elect, Vare's own kinsman. At the opening of Congress, the Democratic floor leader advanced the objection that Beck had not been a resident of Pennsylvania, and sought to have the oath withheld pending investigation. His motion was rejected, however, 158 to 244. After hearings, a House committee on elections decided by a vote of 6 (5 Rep., 1 Dem.) to 3 (1 Rep., 2 Dem.) that Beck was legally qualified. Tendered on March 17, the report (H. Rept. 975) remained unacted upon at the end of the session. Mr. Beck was only slightly active in House affairs.

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even apart from the relaxed mood and leaderless condition of insurgency in the lower chamber.

In the Senate, however, the Republican lead had been reduced to a hair. Even if Smith of Illinois and Vare of Pennsylvania were counted, those called Republicans numbered only 48, against 47 Democrats and a Farmer Labor member. Deaths chanced to net the Republicans a seat, so that at the session's close, although lacking Smith and Vare, they still had a plurality of one.[4] Two empty seats in the meantime were evidence of the weakness of the regular Senate Republicans when deprived of the aid of House amendments and House conferees. At oath-taking time on December 5 Smith and Vare stood aside when Senator Norris interposed objections. The two cases were handled separately, and were indeed distinguishable. The objections to Smith concerned the amounts and sources of an admitted expenditure of $458,782 in the Illinois primary of 1926; the case of Vare involved, in addition, charges of fraud and a pending contest between him and William B. Wilson, his Democratic opponent in the general election. In both cases it was assumed that an investigation would take place; but the defenders of Smith and Vare sought to have them seated in the meantime, or, failing that, to have the matter referred to the regular committee on privileges and elections instead of the special committee on campaign expenses headed by Senator Reed of Missouri.[5]

The attack on Smith was opened first. On December 7, after two days, debate, the resolution offered by Senator Norris (S. Res. 1, modified slightly to allow Smith the privilege of the floor in order to defend himself) prevailed by a vote of 53 (16 Republicans, 36 Democrats, 1 Farmer Labor) to 28 (24 Republicans and 4 Democrats). Reporting on January 17 after hearings, the special committee recommended a resolution that Smith was not entitled to a seat because the acceptance and expenditure of the money involved in his candidacy were "contrary to sound public policy, harmful to the dignity and

[4] A. A. Jones of New Mexico and W. N. Ferris of Michigan, Democrats, were replaced by A. B. Cutting and A. H. Vanderberg, Republicans; F. B. Willis of Ohio, Republican, by C. Locher, Democrat—all by appointment.

[5] Constituted originally in the 69th Congress under S. Res. 195, the attempt expressly to empower it to act between Congresses had provoked the filibustering duel between the two Reeds in March, 1927. Despite opposition from the chairman of the Senate committee on audit and control, it had sought to act in the interim. Its existence was confirmed in the 70th Congress by S. Res. 10, adopted on December 12, by 58 (16 Rep., 41 Dem., 1 Farmer Labor) to 21 (20 Rep., 1 Dem.)

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honor of the Senate, dangerous to the perpetuity of free government. . . . . " This was adopted on January 19 by 61 (21 Republicans, 39 Democrats, 1 Farmer Labor) to 23 (21 Republicans, 2 Democrats).[6] The parallel proceeding against Vare went swiftly through the first phase but thereafter dragged a different, inconclusive course. On December 9 the case was sent to the special committee by a vote of 56 (17 Republicans, 38 Democrats, 1 Farmer Labor) to 30 (25 Republicans, 5 Democrats). When the session ended, both the special committee and the regular committee on privileges and elections (having the case of Wilson against Vare before it)[7] were understood to be struggling with the legal and practical difficulties of a recount.[8]

Organization. The House organized on December 5 by reëlecting Nicholas Longworth over Finis J. Garrett by the strictly party vote of 227 to 187, with the two Farmer Labor members and the single Socialist recording themselves "present." The Speaker gave a genial wave to Wisconsin as he took the chair: "I am particularly pleased to have received the votes of gentlemen who have been seated on my party's side of the aisle for the past four years, but who on two previous occasions have preferred to vote for a candidate for Speaker other than the one proposed by the Republican majority. I welcome your return to the Republican party, where you rightfully belong." The rules of the previous Congress were adopted without controversy and without

[6] S. Res. 112, p. 1781. (The reference, as always when pages are given without further citation, is to the *Congressional Record*, vol. 69). A word about the aftermath must suffice. Official Illinois had intervened in the hearings to the extent of sending its attorney general and a legislative delegation. On February 9, 1928, Governor Small named Smith to fill the vacancy and ordered a senatorial primary on April 10. In the débacle of the Small-Thompson-Crowe faction, Smith lost the nomination to Otis F. Glenn by 656,158 to 525,847.

[7] S. Res. 68, agreed to without debate on December 17, p. 781, cited the fact that the Wilson-Vare contest had been referred to the committee on privileges and elections. On March 4, 1927, it renewed this reference. Noting the investigation that was being conducted by the special committee, the resolution authorized each committee to consider evidence taken by the other.

[8] On May 28, in the case of James A. Reed, et. al., Petitioners, v. the County Commissioners of Delaware County (72 L. Ed. 462), the United States Supreme Court held that the special committee, under the authority granted to it by the Senate, did not have the right to invoke the power of the judicial department. As a matter of fact, the documents in question had already been secured; the point was carried up because of its interest in law. In another connection, the Senate on March 24 ordered the arrest of T. W. Cunningham as a recusant witness (S. Res. 179, p. 5491). The matter was later certified to the U. S. district attorney (p. 5565).

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change, save for the abolition of sixteen standing committees described as "deadwood used simply to furnish assignments to members."[9] The formal election of the 46 remaining committees took place without untoward incident on December 6 and 12.[10]

The organization of the Senate was accomplished without the deadlocks that marked the 68th Congress, and even without evident friction, but not without risks and uncertainty. The 33 standing committees, increased somewhat in size as a concession to the progressive faction and to the minority, were elected on December 13. Pat Harrison could not resist a gibe: "There is nothing in the suggestion that there are certain senators on the other side who must see what committee assignments they receive before they vote on the organization of the Senate, is there?" (p. 479). Certainly it was not until December 15 that the organization was completed by the reëlection of George H. Moses as president *pro-tem*, by a vote of 42 to 39. Among the newly chosen chairmen, furthermore, were Nye, of public lands and surveys, Frazier, of Indian affairs, Norbeck, of banking and currency, and Howell, of claims.[11] The circumstances were hardly less arresting because these selections were in accordance with seni-

[9] P. 11. The committees thus abolished were: alcoholic liquor traffic, railways and canals, woman suffrage, industrial arts and expositions, mileage, and eleven committees on expenditures. Altogether, 129 assignments were involved, although 17 of these had not been filled in the 69th Congress. As an offset, a committee on expenditures of 21 was created, and the membership of 13 important committees was increased—from 21 to 23 in the cases of commerce and judiciary and from 15 to 21 in the other instances. In this way 86 new assignments were made possible. Of the members affected, furthermore, 54 had four or more committee assignments in the 69th Congress.

[10] Action on December 6 was confined to the committees on ways and means and appropriations. In connection with the latter, the Democratic spokesman, Garner, offered the names of only the hold-over minority members, for (he explained) "under our organization on this side of the House we must report to the caucus for the confirmation of the action taken and we have not yet had that caucus" (p. 130). A colloquy between Mr. Tilson and Mr. Connally brought out that the Republican committee on committees is not required to report formally to a caucus (p. 485). On December 12 the complete lists were offered on separate motions of the two floor leaders.

[11] Norris was already chairman of judiciary; Couzens, of education and labor; McNary, of agriculture; Johnson, of immigration; and Borah, of foreign affairs. Perhaps the only committee assuredly under strictly regular control was privileges and elections, and even it had been forced to share its power with the special committee.

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ority, including Nye's, since the four Republicans who outranked him preferred other chairmanships.

Something like a bargain there was, and the manner and mood of its making are clues to some of the dynamics of the session. Even if the Progressive Republicans had offered it, the Democrats were not seeking the responsibility of factitious control on the eve of a campaign. The very conditions in party government that give power to such a group as the Senate Progressives limit its exercise. The group could hardly threaten, but it was feared, and there was room for cautious pressure and a kind of understanding. Its modest strategy was embodied in an interchange of letters between Senator Curtis, the majority leader, and Senator LaFollette and four associates.[12] On December 1 the group wrote: "The result of the 1926 elections has placed upon us a responsibility to our constituents which we must discharge. We are not so vitally concerned with individual preferment of senators upon committees. The more important question with us is that certain legislation which we think is of paramount interest to the people shall not be pigeonholed. . . . . To that end we request definite assurance from the Republican majority that there shall be a final vote in the Senate before the adjournment of the first session of the Seventieth Congress upon the following measures. . . . ." The three proposals listed were, first, farm relief legislation on the basis of the McNary-Haugen bill; second, a resolution for the investigation of policy in Central and South America; and third, a bill to regulate the issuance of injunctions. Senator Curtis' acknowledgment on December 3 declared his personal belief that votes were due on these matters; the personnel of the committee chairmen, he thought, guaranteed that the bills would not be pigeonholed. The Progressives countered by pressing him to consult with all the Republican members of the committees involved. Mr. Curtis said that the correspondence would be brought before the Republican conference. When this was done on December 6, the majority leader was authorized to confer further with the Progressives. The upshot was a statement released to the press by them: "In our meeting with Senator Curtis he assured us that 'a majority of the Republican conference took the position that

[12] The others were Blaine of Wisconsin, Frazier and Nye of North Dakota, Republicans, and Shipstead of Minnesota, Farmer Labor. Senator Norris did not join in the correspondence; indeed the writer gathers that he thought it a mistake. On December 13, in seeking to reply to Harrison's innuendo, LaFollette inserted the whole correspondence in the *Record*, pp. 541–2.

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there should be no unnecessary delay in securing a vote upon the three measures during this session of Congress.' Having obtained definite assurance from Senator Curtis and the Republican conference, we shall assist in organizing the Senate, reserving our right to pursue an independent course of action upon questions which may arise during the session." Two matters from their list did indeed reach the floor, and the anti-injunction bill was held back only by their inability to find time to perfect it.[13]

The caucuses, or "conferences," it is needless to observe, hardly function after the opening of Congress. None seems to have been held in the House, and none on the Republican side in the Senate, after the preparatory authorization and perfunctory ratification of the party organs that are summarized in an accompanying table (below, p. 656). The Democratic senators, however, met at least three times—in connection with flood control and the merchant marine (though in both instances the non-partisan character of the legislation was emphasized), and again in connection with the altercation on January 18 between Senator Heflin and the floor leader.[14] The caution with which the conference pronounced on this fantastic situation need not have caused surprise. Party groups are perhaps cowardly, but they are experienced enough to know the nature of their cohesion and the narrow limits of direct discipline.

Procedure. Control is far from absolute even in the relatively numerous, regimented House. The writer recalls the frank, off-hand

[13] Below, pp. 665, 682. The statement in the text construes the vote on the proposed rider regarding Nicaragua on the naval appropriation bill as meeting the second item.

[14] Senator Robinson remonstrated in the course of one of Heflin's anti-Catholic tirades, leading Heflin to retort: "So far as I am concerned, I am going to object to the Senator remaining on that committee any longer" (referring to the special committee to investigate the so-called Hearst documents purporting to show attempts by Mexican authorities to bribe certain senators). He added that "The Senator from Arkansas cannot remain leader of the Democrats and fight the Roman Catholics' battle every time the issue is raised in this body without some expression from a constitutional Democrat" (p. 1721). Robinson promised to call a conference on the following day and challenged Heflin to move the selection of another leader. By a vote of 35 to 1 (Trammell of Florida), the conference contented itself with a resolution expressing "its confidence in the leadership of Senator Robinson and his services on the special committee . . . . ." Many people regretted that the bare facts gave Heflin (who did not attend) a chance to say: "The conference refused to pass a line that smacks of censure of me or of my position" (p. 1765).

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PARTY ORGANIZATION IN THE SEVENTIETH CONGRESS, FIRST SESSION

(Individuals indicated with an asterisk held similar positions in Sixty-ninth Congress)

SENATE[15]

Republican	*Democratic*
*Moses, G. H. (N. H.) Pres. *Pro-Tem*	*Robinson, J. T. (Ark.) Floor Leader
*Curtis, C. (Kan.) Floor Leader and Chairman of Rules	*Walsh, T. J. (Mont.) Vice Chairman of Conference of Minority
*Jones, W. L. (Wash.) Whip	*Gerry, P. G. (R. I.) Whip
Steering Committee	Steering Committee
(Committee on Order of Business of Republican Conference)	*Robinson, J. T. (Ark.)
Sackett, F. M. (Ky.)	*Walsh, T. J. (Mont.)
Keyes, H. W. (N. H.)	*Pittman, K. (Nev.)
*Norbeck, P. (S. D.)	*Swanson, C. A. (Va.)
Shortridge, S. M. (Cal.)	*Harrison, P. (Miss.)
Howell, R. M. (Nebr.)	*Simmons, F. M. (N. C.)
Robinson, A. R. (Ind.)	*Sheppard, M. (Tex.)
Waterman, C. W. (Colo.)	*Kendrick, J. B. (Wyo.)
	*Caraway, T. H. (Ark.)
	*Broussard, E. S. (La.)
	Fletcher, D. U. (Fla.)

HOUSE[16]

*Longworth, N. (Ohio) Speaker	*Garrett, F. J. (Tenn.) Floor Leader
*Tilson, J. Q. (Conn.) Floor Leader	*Oldfield, W. A. (Ark.) Whip
*Vestal, A. H. (Ind.) Whip.	*Garner, J. N. (Tex.) Ranking minority member of Ways and Means and leader of group which acts as a committee on committees
*Snell, B. (N. Y.) Chairman of Rules	
Steering Committee	
*Tilson, J. Q. (Conn.)	
*Darrow, G. P. (Pa.)	
*Dennison, E. E. (Ill.)	
*Sinnott, N. J. (Ore.)	No party instrumentality corresponding to the steering committee exists.
*Treadway, A. T. (Mass.)	
*Newton, W. H. (Minn.)	
Hoch, H. (Kan.)	
Lehlbach, F. R. (N. J.)	
Demsey, S. W. (N. Y.)	
Johnson, R. C. (S. D.)	

[15] *Senate Methods.* (a) Republican. In addition, a committee on committees of nine members, appointed by the Floor Leader, exists. (b) Democratic. The preliminary organization caucus was held on March 5, 1927. It authorized the Floor Leader to choose the steering committee, which worked out committee assignments. The three ranking minority members of each standing committee were made committees of the minority conference.

[16] *House Methods.* (a) Republican. The preliminary caucus on organization was held on February 21, 1927, consisting of the members-elect. It authorized a committee on committees consisting, as usual, of one member from each state having Republican representation, selected by the Republican members of the delegation and having proportional voting power. The steering committee was chosen by this body. (b) Democratic. The preliminary caucus was held on March 1, 1917. In addition to the leaders, it chose the Democratic members of ways and means and authorized them, as usual, to act as a committee on committees. The assignments were ratified at a second caucus on December 8.

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comment of one of the most powerful leaders on the work of the session that had just closed. Yes, a good session, but not the best—he named some of the outstanding enactments; they were not good bills. It was clear that he had little stomach for them. Yet they had moved through the congestion, aided usually by special rules which could hardly be withheld.

The number of special rules agreed to and used in the consideration of bills was 17, compared with 16 and 19 in the long sessions of the 69th and 68th Congresses, respectively. Six others were reported, of which two were replaced, two laid on the table, and two never brought to a vote. One of the latter (H. Res. 222) was for the consideration of a civil retirement bill (S. 1727). Bertrand Snell, chairman of rules, was unabashed in his admission of responsibility. "Why has he not brought forward the rule which applies to the retirement bill . . . . ?" asked a member. "Because I have not seen fit to," said Mr. Snell (p. 10731). The metaphor is not his, but it is evident that Mr. Snell conceives himself bound to the mast with deafened ears, duty-sworn and imperious. The House (he will explain) is often glad to be saved from itself in the face of pressure of certain kinds. With the exception of the revenue bill and the measure for Muscle Shoals (S. Jt. Res. 46), the major bills of the session moved under special rules;[17] so too did one that changed the rank of the President's physician.

Consequences that indirectly promise badly for House procedure may follow the defeat of a bill to direct an automatic reapportionment (the first since 1911) following the 1930 census, on the basis of a continued membership of 435. The proposal (H. R. 11725) was recommitted on May 18 by a vote of 186 to 164 (p. 9447). It had been hoped that the *impasse* due to the dread of lost seats or of a larger House could be broken by making the legislation anticipatory; and the attempt may be renewed in the second session. The comment of the veteran Burton of Ohio is interesting: "I say here frankly and bluntly that I would rather fail to comply with the constitutional provision than see the size of the House increased. . . . . I cannot describe to

[17] Regarding the extent to which the business of the House is done by unanimous consent, see below, p. 681. It may be added, from a different angle, that no serious attempt was made to use the discharge rule adopted December 7, 1925. Johnson of South Dakota waved a petition blank in connection with a bill for war-time conscription of wealth, but faded when the chairman remarked that he would be glad to have hearings if only Mr. Johnson would request them (April 5, p. 6212).

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you too strongly the difference between the transaction of business in this House when I first became a member of it, when there were only 325 members, as now compared with 435" (p. 9296).

The Senate never came to clôture, although there was talk of it in several connections,[18] and ample provocation in the filibustering led by Ashurst of Arizona against Johnson's bill for the high dam at Boulder Canyon (S. 728). "My physical energy is superb," Ashurst gave the Senate to understand in April; "let no one doubt that my voice, my heart, my knees or backbone will ever play traitor to me in this fight. But if, perchance, I stumble in this fight to the death, my worthy colleague will pick me up" (p. 7701). A month later, during an all-night session that ran to thirty hours, he had strength to range as far as "the Petrified Forest, whose trees lived their green milleniums and put on immortality in Triassic time, 7,000,000 years ago." Boulder Dam was on the preferred list of the steering committee, but Johnson had stood aside for the revenue bill. Instead of a few days, that measure took two weeks; and it is hard to resist suspecting concealed filibustering aimed at more than Boulder Dam. Johnson had votes for passage, not for clôture; and in general he is probably unsympathetic to the latter anyway. At any rate, he ignored taunting references to a petition that Ashurst supposed he had in his vest pocket (p. 9583). The House meanwhile passed the companion bill under a special rule; the vote was 219 to 132 (H. R. 5773, May 25, p. 10237). Johnson was able to fight off motions that would have displaced his bill,[19] but (despite aid from the Vice-President in resolving negatively a tie vote on a motion to agree with the House on adjourning May 29) he failed by a vote of 39 (17 Republicans, 21 Democrats, 1 Farmer Labor) to 41 to have the date postponed to June 5. The upshot was a draw—perhaps a sporting disposition after all, in view of the fact that both Johnson and Ashurst have campaigns on their

[15] On May 26, for example, Reed of Pennsylvania announced that he had in his pocket a petition bearing more than sufficient names for use on a bill regarding promotions in the air corps (H. R. 12814, p. 10345). It was not used, in view of the position of Boulder Dam as unfinished business.

[19] On May 26, for example, motions to take up the bills for army promotions (H. R. 12814) and naval construction (H. R. 11526) were defeated by votes of 16 to 51 and 22 to 43, respectively (p. 10361).

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hands.[20] Boulder Dam survives as the unfinished business of the Senate at the opening of the short session.[21]

A filibuster against the conference report on Muscle Shoals (S. Jt. Res. 46, below p. 668) was broken by determined and skillful management. Here also a state's sectional pique did valiant service for those who disliked the underlying feature of government operation itself. Tennessee led the obstruction. After a siege of twenty hours in an all-night session, the conference report was agreed to on May 25 (p. 10167) by 43 (16 Republicans, 26 Democrats, 1 Farmer Labor) to 34 (22 Republicans, 12 Democrats). This outcome was a tribute to the parliamentary master who years ago found the crack in Cannon's armor. Senator Norris' strategy lay essentially in placing and keeping the conference report on Muscle Shoals ahead of those on the revenue bill, the second deficiency bill, and other measures. The pressure thus created helped to keep the Senate in session and to force a vote.

These filibusters, it should be remembered, occurred in a session that faced a virtually fixed time of adjournment, due to the conventions. So far as the permanent evil of alternating short sessions goes, reform has been delayed by the defeat of the so-called "lame duck amendment" (S. Jt. Res. 47). It passed the Senate again on January 4 by 67 to 6 (4 Republicans, 2 Democrats), and having been favorably reported in the House—the fourth time—was at last brought to a vote there under a special rule. The House committee inserted the provision, however, that the sessions in even-numbered years should terminate on May 4. The writer guesses that the rules committee would not have aided it without this change, and may indeed have

[20] S. Jt. Res. 164, approved May 29, Public Resolution No. 65, was whisked through at the last minute; it provides for a rechecking of the Boulder Dam site before the next session by a board of experts to be appointed by the President. This group began work in July.

[21] Color was furnished at the close when Bruce of Maryland, Democrat, sought to speak against Johnson's motion (made at the urging of Robinson, Democratic floor leader) that Boulder Dam be made a special order for the opening day. "Ayes and noes, ayes and noes," Robinson bellowed, waving his arms to a shouting chorus. The roll had indeed started (though the *Record* is not revealing on this point) when LaFollette intervened with an appeal to the rules of the Senate. Such alertness and such parliamentary sense deepen respect for the youngest of senators even among his political opponents. At this moment, amid confusion, the Senate was taken into executive session to cool, and the show was spoiled. Heflin furnished pathos during the final hour, which King filled with Turkish wrongs to Armenia; he moved about with what was evidently a speech in his hand, suffering visibly.

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dictated its terms. The change was in line with the deep, explicable distrust of easier methods of legislation felt by the elements that man the House machine.[22] In its revised form, the proposed amendment certainly offered no remedy for the opportunity which short sessions of fixed duration give to filibustering. The new language was finally stricken out in committee of the whole by 151 to 96. Then, unfortunately (March 9), the resolution fell short of the necessary two-thirds, receiving 209 (89 Republicans, 118 Democrats, 2 Farmer Labor) to 157 (102 Republicans, 55 Democrats) (p. 4593).

The President and Congress. Seldom has the bifurcation of our politics been more evident. On the positive side, interest attaches to tax reduction, flood relief, and naval construction as tests of executive influence in legislation. On the other side, interest does not lie in the number of vetoes, although seventeen is above the average, nor in the fact that six attempts were made—three of them successfully—to override the President's objections.[23] The interest runs deeper. What

[22] A further factor, no doubt, was their belief that it may sometimes be inconvenient, even embarrassing, to have Congress in session too near to election time.

[23] Altogether, 13 bills were returned with veto messages. Three of these were overridden. Two of the bills in question affected salaries, etc., in the postal service and together, the President argued, meant an added cost of $9,321,000 annually. Thus H. R. 5681 created a differential of 10 per cent for night work by postal employees. The vote to pass it over the veto in the House was 319 (161 Republicans, 155 Democrats, 1 Socialist, 1 Farmer Labor) to 42 (39 Republicans, 3 Democrats); in the Senate, 70 to 9 (all the latter being Republicans). H. R. 7900 gave fourth-class postmasters an allowance for fuel, light, and equipment. The vote to pass it over the veto was 319 (161 Republicans, 155 Democrats, 1 Socialist, 1 Farmer Labor) to 46 (41 Republicans, 5 Democrats); and in the Senate 63 to 17 (14 Republicans, 3 Democrats). The third successful attempt involved S. 777, for the retirement of disabled emergency officers, assimilating their treatment to that of regulars. The overriding vote in the Senate was 66 (24 Republicans, 41 Democrats, 1 Farmer Labor) to 14 (13 Republicans, 1 Democrat); in the House, 245 to 101. In addition, one other attempt to override a veto passed one house. This concerned S. 3674, for aid to the amount of $3,500,000 a year for three years in the construction of roads on unappropriated unreserved lands and non-taxable Indian lands, etc. Having passed the Senate on May 24 by 57 (19 Republicans, 37 Democrats, 1 Farmer Labor) to 22 (17 Republicans, 5 Democrats), the bill failed in the House on the next day by 161 to 182. Two other attempts were brought unsuccessfully to a vote in one house. One of these was a minor bill, S. 750, to commission band masters; it missed two-thirds by 44 (11 Republicans, 32 Democrats, 1 Farmer Labor) to 32 (25 Republicans, 7 Democrats). The other attempt concerned the farm surplus bill, S. 3555; it failed by 50 to 31 (below, p. 665). Of the other bills that

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is this representative process that rolls up such majorities as the farm surplus bill received, only to strike it down by a veto prickly with aspersions? What is this responsible government in which a plan for Muscle Shoals, having won its way through Congress after eight years of discussion, is swallowed in the lethal obmutescence of the White House?

The President's victory in his effort to keep down the total of tax reduction is misleading as a test of strength unless considered in the light of the variant viewpoints on taxation held by the Democrats and Progressive Republicans. Their divergence helped to make it possible to hold the cut to a little less than $225,000,000, although in the choice of forms of taxation within the total the recommendations of the Administration were repudiated in important particulars.[24]

received messaged vetoes, the most important was H. R. 11026, for the coordination of public health activities. Two others concerned the War Department—H. R. 7752 (reserve supplies) and 8550 (small arms practice); two more dealt with Indian tribes (H. R. 167 and S. 1480); two were private (H. R. 4664 and 10139). For four pocket vetoes, see below, p. 668.

[24] Hearings on H. R. 1 began October 31, 1927, when Secretary Mellon recommended: (1) reducing the corporation tax from 13½ to 12 per cent; (2) permitting very small corporations the option of being taxed as partnerships; (3) readjusting surtax rates in the brackets between $18,000 and $70,000; and (4) repealing the estates tax. He opposed changes in the automobile, theater admission, or stamp taxes. The total reduction, he said, could not safely exceed $225,000,000. The repudiation of the Treasury plan began even in the committee on ways and means, which decided to recommend a total reduction of $250,000. It decided against the repeal of the estates tax, 17 to 6, and against the surtax reduction in the middle brackets, 21 to 2. The Democrats found allies enough, when the bill got on the floor, to insert and sustain amendments providing for the graduated corporation tax (136 to 132; 212 to 182); dropping consolidated returns by affiliated companies (158 to 153; 219 to 187); and eliminating the automobile sales tax instead of halfing it as the committee suggested (166 to 142; 245 to 151). With the Republican leaders gathered in a huddle like a disconcerted backfield, the bill passed the House on December 15 by 365 to 24 (21 Republicans, 1 Democrat, 1 Farmer Labor, 1 Socialist) (p. 718). It carried a total reduction estimated at $289,000,000. Secretary Mellon asked the Senate to defer consideration until the income tax returns were received in March. The Senate committee agreed to this by 11 to 9—a party vote. On April 6 the Secretary renewed his proposals and urged a limit of $201,115,000. The Democrats took issue; the committee reported by a strictly party vote, apart from the estates tax, on which the committee reversed itself and decided (after a tripartite conference in which the White House was involved) not to recommend repeal. In the Senate the committee's draft was changed by the adoption of an amendment for a graduated corporation tax by 40 (2 Republicans, 38

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The Democrats tended to look at the problem in terms of tax reduction; they talked of taking off $300,000,000 or $400,000,000. They seemed to share what Mr. Tilson called the "atmosphere of protest fomented by the National Chamber of Commerce." Their preference for a lower corporate income tax rate, their proposal for a graduated corporate income tax, and their concern for surtax brackets below $20,000 were quite typical. As for indebtedness, Senator Simmons, ranking member of the Senate committee on finance, remarked: "I feel that we ought not to be forced, as we are now being forced by the Administration, to pay off this indebtedness with undue rapidity" (p. 9704). Borah, on the other hand, spoke for more than himself when he said: "There are some of us who do not care very much about tax reduction at this session. We would prefer to apply the surplus to the public debt" (p. 9045). The more truly progressive Republicans could go further, for their theory holds the bolder implications of fiscal reform through taxing and spending. From them, ironically, came support for the Administration's vigorous contention that the estimated surplus would not allow the reduction of $289,000,000 contemplated by the bill as it passed the House on December 15. At this stage Mr. Garner could proudly say: "The minority has predominated in the consideration of this bill;" and Mr. Tilson could do no more than hope that "when the bill comes back to us again it may be a very different bill" (p. 719). The consideration of the measure in the upper house afforded practically the only party roll calls there during the session,

Democrats) to 38 (37 Republicans, 1 Farmer Labor); by the rejection of a committee amendment to make the income tax reductions retroactive by 54 (13 Republicans, 40 Democrats, 1 Farmer Labor) to 28 (27 Republicans, 1 Democrat); and by the adoption of the Norris amendment for publicity of returns by 27 (12 Republicans, 14 Democrats, 1 Farmer Labor) to 18 (13 Republicans, 6 Democrats). The retention of the estates tax, furthermore, was sustained against Bingham's motion by 30 (11 Republicans, 19 Democrats) to 43 (25 Republicans, 17 Democrats, 1 Farmer Labor). In the end the graduated corporate income tax was voted out and dropped in conference; so, too, were the surtax reductions and the provision for publicity of returns. The conference report was accepted in the House on May 26 without opposition. In the Senate a vote was had only on the provision for income tax publicity, which lost by 23 (11 Republicans, 11 Democrats, 1 Farmer Labor) to 57 (27 Republicans, 30 Democrats). The bill was approved on May 29 (Public No. 562). The prospective net reduction was put at $222,485,000, but because of deferred dates in the inauguration of some of the changes, the curtailment in the present fiscal year will probably be much less.

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aside from those on formal organization. Even so, the bill that passed the Senate in May flouted the Administration's policy at some important points, as in the repeal of the automobile sales tax and the retention of the federal estates tax. Indeed, keeping the estates tax was the price of the bill. Had the Senate not been willing to abandon the idea of its elimination, the Progressive Republicans would have joined with the Democrats in voting for a bill that would have forced the President to choose between self-stultification and a veto.

Flood relief afforded a clear case of executive influence in shaping the details of legislation, but a dubious test, at the best, of the President's ability to carry his original point. The bone of contention in the consideration of the bill[25] was the question of local contributions, for there was little will in Congress to play engineer in deciding mooted technical points.[26] The President indicated his position when, in send-

[25] The Mississippi flood of 1927 had given rise in June to talk of an extra session, and in default of that it was assumed that there would be important action in the regular session. The "Jadwin plan" in its original form contemplated work totaling $296,400,000, i.e., $185,400,000 for flood control, aided by local contributions amounting to 20 per cent, and $111,000,000 for channel stabilization, borne wholly by the United States. Hearings were held in both houses. The Reid bill (H. R. 8219) was reported to the House on February 16 by a vote of 11 to 6; it involved plans totaling $473,000,000, to be borne wholly by the national government. On March 28 a Senate bill (S. 3740)—somewhat nearer to the Jadwin plan, but stripped of the requirement of local contributions—slipped through unanimously in record time for a bill of such magnitude. On April 2 the House committee reported this bill in amended form. There were intimations that the President disapproved of it because the authorizations were too indefinite; indeed he was quoted as saying that it was "the most extortionate proposal that has ever been made on the nation's revenues." The House leaders in close touch with the White House offered amendments. Madden, for example, was beaten on such an amendment by 142 to 73, Tilson by 119 to 67 and 306 to 139. The bill was passed by the House on April 24 by 254 (85 Republicans, 168 Democrats, 1 Farmer Labor) to 91 (86 Republicans, 3 Democrats, 1 Socialist, 1 Farmer Labor) (p. 7426). Even in conference, friction with the President continued. He indicated that he would veto the bill unless changes were made. At this point it was called back into conference, and it was considered in at least one discussion at the White House offices. On May 8 it was said that the President considered the payment of damages to have been the principal difficulty in connection with the measure. The bill was signed on May 15 (Public No. 391). The authorized appropriations total $325,000,000. On June 8 General Jadwin announced that 12 per cent of the job would be finished within a year and the whole within ten years.

[26] The act in general adopts the project recommended by the chief of engineers, General Jadwin, as given in H. Doc. 90, but among other stipulations

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ing the report of the chief of engineers to Congress on December 8, he particularized the advice offered in his regular message: "The federal government may even bear 80 per cent of such costs, but substantial local coöperation is essential to avoid waste." As late as February 17 it was officially said: "There has been no modification in the views of the President relative to local contributions. . . . . " Nevertheless, the bill (S. 3740) that passed the Senate unanimously on March 28 contained no provision for direct local contributions. As reported in the House on April 2 (H. Rept. 1100), it paid lip service to the principle, but declared "no local contribution to the project herein adopted is required." The President's interpretation of the meaning of local contributions tended to shift. The underlying idea in the plan under consideration was the relief of the main channel rather than high levees or the more ideal and perhaps ultimate solution of reservoirs. This fact enhanced the importance of flowage rights, spillways, rights of way for levees, and protection against damages. Concessions on these points could be construed as local contributions. Enough were made to enable the President to pronounce himself satisfied, if not wholly pleased, with the measure.

The problem of naval construction, given a new turn by the miscarriage at Geneva, brought the Administration before Congress with an ambitious program which the House cut in half and which the Senate sidetracked. It was understood that the Secretary of the Navy had the endorsement of the President when on December 14 he presented a nine-year plan for the construction of 25 light cruisers, 9 destroyer leaders, 32 submarines, and 5 aircraft carriers—all at a cost estimated at $725,000,000. Such a program, said Mr. Wilbur, is "in no sense competitive but is based on the needs of our navy as determined by the Secretary of the Navy upon the technical advice of the general board of the navy." None of the vessels, except the aircraft carriers, he added, are of types covered by the Washington treaty. The proposal evoked widespread protests. By February it was said that the President considered the cruisers most important and would be content with that feature rather than see the whole defeated. In

it provides for a board of three—the chief of engineers, the president of the Mississippi River Commission, and a civil engineer appointed by the President from civil life—to consider engineering differences between the plan of the chief engineers and that of the commission, subject to the final decision of the President.

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the end the bill, as reshaped by the committee and introduced on February 28 (H. R. 11526), authorized 15 crusiers and one aircraft carrier, at a cost of $274,000,000.[27] The President incidentally won his point that discretion be allowed him to suspend the program in the event of a future limitation agreement. Taken on the floor by a special rule adopted by 322 to 13 (12 Democrats, 1 Republican), the bill passed on March 17 without a roll-call; the division was 287 to 58. Burton of Ohio confessed himself "gravely disturbed by the ambitious program." On the other hand, when a member asked "Why did not the committee give us what President Coolidge asked for—a real navy?" the ranking minority member of the committee (a supporter of the bill) replied: "In our judgment the naval mission did not require what the President recommended. . . . . " The bill was formally reported to the Senate on May 3, but other business interfered. On May 26 the Senate, by a vote of 44 to 22, refused to take it up in place of Boulder Dam. In its deflated form, but still the biggest construction proposal in many years, the bill awaits action in the second session.

The veto for a second time of the bill for farm surplus control[28]

[27] Only one member dissented, i.e., McClintock, an Oklahoma Democrat, whose minority report proposed 15 submarines and alterations on existing battleships to enable them to carry aircraft, calling for $93,000,000 in all. McClintock's proposal, offered as an amendment in committee of the whole, was rejected by 22 to 129. On March 15 Representative Huddleston took notice unfavorably of Secretary Wilbur's presence on the floor, leading to some comment on the practice (pp. 4962–3).

[28] The McNary-Haugen bill (S. 1176, rewritten as S. 3555; H. R. 7940, rewritten as H. R. 12687). Mr. Aswell of Louisiana, ranking Democrat on the committee on agriculture, introduced H. R. 9278, which proposed a revolving fund without the equalization fee. Mr. Ketcham of Michigan offered the so-called debenture plan (H. R. 10568) in behalf of the National Grange. The Senate committee unanimously reported the McNary bill on March 8 (S. Rept. 500). The House Committee voted to retain the equalization fee by 13 (7 Republicans, 6 Democrats) to 8 (6 Republicans, 2 Democrats), and rejected the debenture plan by 13 to 8. The bill itself was reported in the House on April 15 by 15 (9 Republicans, 6 Democrats) to 6 (4 Republicans, 2 Democrats) (H. Rept. 1141). The Senate acted first. On April 11 it decided to increase the revolving fund to $400,000,000, by a vote of 42 (16 Republicans, 25 Democrats, 1 Farmer Labor) to 30 (22 Republicans, 8 Democrats). On April 12 it refused to strike out the equalization fee, the vote being 31 (18 Republicans, 13 Democrats) to 46 (22 Republicans, 23 Democrats, 1 Farmer Labor). The vote on final passage on April 12 was 53 (24 Republicans, 28 Democrats, 1 Farmer Labor) to 23 (14 Republicans, 9 Democrats), with 2 Democrats and 3 Republicans paired for and 3 Democrats and 2 Republicans paired against it. The House at

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raises more than a campaign issue; it sharpens the old, perhaps insufficiently considered, question of the ambiguities of representation under presidential government. That such a bill would pass was universally assumed. When it was evident that the equalization fee was at once considered an indispensable feature and an insuperable objection, the inevitability of a veto was nearly as widely taken for granted. How came the fee to be crucial? The question may well be made a leading one. Although the President had said in his regular message that "the most effective means of dealing with surplus crops is to reduce the surplus acreage," he was willing that there should be machinery to provide aid from a revolving loan fund to help the coöperative movement in meeting "surpluses clearly due to weather and seasonal conditions." This was a guarded statement, to which the veto message recurred; but it was repeatedly said that the President would have signed a measure like Aswell's, even though it held the possibility of losses to the government. There were anomalies here; it seemed a bit illogical that the agrarians should contend for the duty of paying costs whereas the opponents of government in business should appear to be willing to be careless with huge revolving funds. One view of the matter is that the proponents of the measure were interested primarily in its effect on the fortunes of certain candidates—Lowden, and perhaps Dawes—and that they were insistent on the equalization fee because they found the President firmly opposed to

once voted to substitute S. 3555 for the House bill. Debate began in late April. An upset threatened on May 2, when the committee of the whole voted by 141 to 120 to insert the Aswell bill as an amendment to one of the sections. The proponents of the equalization fee rallied, however, and all the other sections in the original bill were retained. On a critical roll-call in the House next day, Aswell's substitute was rejected finally, 146 to 185. On May 3 the bill passed the House by 204 (101 Republicans, 100 Democrats, 2 Farmer Labor, 1 Socialist) to 121 (68 Republicans, 53 Democrats), with 18 Republicans and 18 Democrats paired in favor of it and 27 Republicans and 9 Democrats paired against it. The conference report was adopted in the House on May 14, 205 to 117, and in the Senate on May 16 without a record vote. The President vetoed the bill on May 23; and an attempt in the Senate to override the veto on May 25 failed narrowly by 50 (20 Republicans, 29 Democrats, 1 Farmer Labor) to 31 (19 Republicans, 12 Democrats). Four senators who had voted for the bill on April 12 voted to sustain the veto: Curtis, Waterman and Sacket, Republicans, and Fletcher, Democrat. A further phase of the matter was the attempt of Senator Reed of Missouri to attach the debenture plan to the tax bill; his rider was rejected by 23 (5 Republicans, 18 Democrats) to 53 (33 Republicans, 19 Democrats, 1 Farmer Labor) (p. 9697).

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that feature.[29] It seems equally logical to the writer, and even sounder, to believe that the Administration, having found the friends of the measure determined on the fee, thought it good tactics to center their objections on this point. It opened several effective lines of attack: the high grounds of constitutionality; the easy confusion of fee-fixing and price-fixing; administrative complexity; and the objection of some farm elements to paying for what they counted tardy redress.[30] Yet Representative Fort—a preëminently intelligent and active antagonist of the measure—was quoted after a call at the White House as saying that the bill without the equalization fee but with the provisions for marketing and insurance agreements would be just as objectionable. The underlying issue, after all, was the permanency and pervasiveness of the proposed governmental marketing machinery.

Presidential dislike of the proposal for government operation of Muscle Shoals[31] was consistent but less clearly announced. In one important respect at least, the viewpoint of Senator Norris was shared by the President in his annual message: "Development of other methods shows that nitrates can probably be produced at less cost than by the use of hydroelectric power. . . . . This leaves this project mostly concerned with power." Senator Norris thus summarized the situation. "Every bid that is being made is a power bid. I do not care,

[29] In this connection, for example, see the remarks of Representative Aswell p. 7590, and Senator Brookhart, p. 6425. An attack on Herbert Hoover, prepared by George N. Peek (who remained the chief strategist of the forces working for the bill), is found at pp. 6174–79. It is interesting that the percentage of Democratic members of the House who voted for the McNary-Haugen bill increased from 57.1 in 1927 to 65.5 in 1928, whereas the percentage of Republicans voting for it increased from 51.5 to 56.6 It is noteworthy also that both Democratic senators from New York voted for it, and that 6 Democratic members from New York City voted for it or were paired in favor of it in 1928.

[30] Senator Brookhart, who opposed the equalization fee, said on this point: "As a measure of comparative justice, I have provided in my substitute that the government shall pay the losses of the export corporation up to $600,000,000 (p. 6061). This led Senator Norbeck to observe: "This seems to be a case where we have to contend with the real conservatives and the real radicals joining against the farmer. We have not only got to fight Boston on this bill, but we have to fight Brookhart" (p. 6526).

[31] S. Jt. Res. 46, offered by Senator Norris. The Madden-Willis bill (H. R. 44, revised as H. R. 8305—S. 2786) embodied the one outstanding private bid—that of the American Cyanamid Company. During the consideration of S. Jt. Res. 46, Senator Harrison offered an amendment that virtually revived the Underwood plan (passed by the Senate in 1925 by 50 to 30), for a lease accompanied by the guarantee of a production of 40,000 tons of fertilizer annually. It was rejected by 48 to 26.

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how you disguise it by a beautiful fertilizer name . . . . it is power just the same, power; and if you get fertilizer under the cyanamide process, you will have to subsidize it by giving it enough cheap power to make up the losses" (p. 4815). This viewpoint animated the measure that passed the Senate on March 13 by 48 (20 Republicans, 27 Democrats, 1 Farmer Labor) to 25 (15 Republicans, 10 Democrats). It is true that it proposed to authorize the Secretary of Agriculture to use facilities at Muscle Shoals for experiments in the production of fertilizers by the cyanamide process and, if it proved commercially feasible, to produce and sell them in quantity. The real significance of the measure, however, lay in the direction to the Secretary of War to complete the installation of power units and to sell the surplus power, giving preference to governmental as against private bodies and requiring utilities purchasing power to agree not to charge prices above those fixed as reasonable by the Federal Power Commission. The House committee introduced changes that gave greater emphasis to fertilizers, and the front ranks of the opposing lobby shifted accordingly; but in the end the gist of the measure remained the same. Vainly, at the last moment, a substitute was offered by the chairman of the rules committee, proposing to limit fertilizer manufacture more strictly to experimental purposes and to sell the surplus power to the highest bidder; it received 119 votes to 151. On May 16 the joint resolution passed the House by a division of 251 to 165. Two significant House amendments were accepted in conference. One proposed to vest the management in a Muscle Shoals Corporation of the United States. The other proposed a new dam (the Cove Creek Dam, so-called) on the Clinch River, a tributary in Tennessee, to serve as a regulator of high water and a means of conserving navigation and secondary power. It was this feature that furnished the immediate excuse for filibustering in the Senate against the conference report (above p. 659). On May 25 the conference draft was agreed to in both chambers: in the Senate by a vote of 43 (16 Republicans, 26 Democrats, 1 Farmer Labor) to 34 (22 Republicans, 12 Democrats); in the House by 211 (73 Republicans, 135 Democrats, 2 Farmer Labor, 1 Socialist) to 146 (122 Republicans, 24 Democrats). When midnight came on June 7, however, the joint resolutionwas still unsigned. Three other measures fell victim with it to the assumed power of pocket veto.[32]

[32] H. R. 13383, for a five-year fishery program; H. Jt. Res. 238, to double the credits for veterans' preference; and a private bill.

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It is an extraordinary commentary on the costiveness of constitutional law that there should be uncertainty at this late day regarding the legal effect of the President's failure to sign a bill between two sessions of Congress. Yet doubt there is, and some contend that the joint resolution affecting Muscle Shoals has become law. Support for this view is found in a report of the House committee on judiciary in the second session of the 69th Congress, and also in two subsequent rulings on points of order in the House while in committee of the whole.[33] The opposite view, however, was taken by the Court of Claims on April 16, 1928.[34] Regardless of the unsettled points of law and the obvious politics of the situation, there is everything to be said for the view of Senator Norris that such a matter as Muscle Shoals deserved a veto message which would have placed it before Congress for possible consideration in December.[35]

The Legislative Product. In enacting 993[36] public and private laws and resolutions, the session topped even the previous high mark of 896 in the first session of the 69th Congress. There was also an increase in the measures introduced—14,750 items in the House, compared with 13,909, 10,481, 9,775, and 11,419 in the long sessions back through the 66th Congress. In addition, 4,600 bills and 451 resolutions were introduced in the Senate.

Congress is slow to seek effective relief from this mass of detail by delegating power to administrative or other agencies. In the recent session, however, the House took one step in this direction on February

[33] H. Rept. 2054, 69th Congress, Second Session, which favorably recommended a resolution to declare that H. R. 5218, passed a few days before the adjournment of the first session, had become law despite the failure of the President to sign it. The rulings referred to were on February 26, 1927 (vol. 58, pp. 4928–34) and December 9, 1927 (vol. 69, pp. 396–402).

[34] Okanogan, etc., Tribes of the State of Washington v. U. S. Court of Claims, decided April 16, 1928: "The attempted distinction between adjournment of one or the other session is unsound." It was said appeal might be taken. For subsequent comment, see *U. S. Daily*, June 5 and 14, 1928.

[35] A caustic statement by Senator Norris was issued on June 8. *U. S. Daily*, June 9, 1928. Some remarks by Mr. Norris indicated that he might seek to have Congress raise the legal issue, as it conceivably might do in connection with appropriation legislation.

[36] Of the 993 items, 638 were House bills, 283 Senate bills, 46 House joint resolutions, and 26 Senate joint resolutions: so that, formally considered, 68.8 per cent of the measures approved by both branches originated in the House. The statistics on this and related points are those of E. F. Sharkoff, tally clerk of the House.

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17, by passing a federal tort claims bill (H. R. 9285), by a vote of 280 to 65. It proposes that the heads of departments shall adjudicate claims up to $5,000 in order to relieve the committees on claims of a burden which the chairman in the House pronounces intolerable. Bridge bills, on the other hand, seem likely to remain; a growing suspicion in Congress toward applications for toll bridges is reacting, with doubtful logic, against the suggestion that the whole matter be transferred to an executive department. It would be a mistake to exaggerate the trouble involved in measures like these, which follow forms set by the committees and are made contingent on compliance with prior general legislation. It is a greater mistake to allow a superficially successful routine to conceal the problem of unburdening Congress.

A bare list of enactments of interest is offered for convenience, at the cost of some repetition. The order is not significant; there is no single criterion for judging the measures' relative importance.

(1) The Revenue Act of 1928 (H. R. 1, approved May 29, 1928, Public No. 562. Above, p. 661) makes changes which will cause an estimated net reduction of $225,295,000. Outstanding items were the lowering of the corporation income tax from 13½ to 12 per cent; an increase in the exemption granted to small corporations; the repeal of the automobile sales tax; and the increase to three dollars of the exemption in the tax on theatrical admissions.

(2) The act for the control of floods on the Mississippi River and its tributaries (S. 3740, approved May 15, Public No. 391. Above, p. 663).

(3) The Merchant Marine Act of 1928 (S. 744, approved May 22, Public No. 463) was pronounced by the majority leader to be "the most important piece of constructive legislation" of the session. It would hardly have drawn an encomium from this source if the House had not turned inside out the bill passed in the Senate on January 31, by a vote of 53 (19 Republicans, 33 Democrats, 1 Farmer Labor) to 31 (23 Republicans, 8 Democrats). This had been framed with a suspicious eye on some sales pending before the Shipping Board; it authorized replacements, but its salient feature was the requirement that ships should be sold only on unanimous vote of the Board. Completely changed in the House committee, the bill passed on May 5 without a roll call. The conference report was piloted through the Senate by a vote of 51 (28 Republicans, 23 Democrats) to 20 (9 Republicans, 11 Democrats). In its final form it reiterated the policy

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of private ownership announced in 1920; it permitted sales on the vote of five members of the Shipping Board; it authorized an increase of the revolving fund to $250,000,000, to be loaned at interest rates nearly as low as the government's own, when vessels built with government aid are in the foreign trade; it provided that the government shall carry the insurance on vessels in which it has an interest; it also provided for long-time mail-carrying agreements. Like the Senate draft, moreover, the final act authorized the Board to make replacements and improvements in order to balance and modernize the fleet while it remains in government hands.

(4) The Congress that rewrote the merchant marine bill in the House's terms nevertheless supported public operation of barge lines. A statute enacted without a division increased the capital stock of the Inland Waterways Corporation from five to fifteen million dollars, authorized the extension of its facilities to the upper Mississippi, directed a survey of the possibility of installing them on the inland water route on the eastern seaboard (a Senate amendment), and in addition ordained joint rail and water rates on goods moving by barge (H. R. 13512, approved May 29, Public No. 601).

(5) Child labor in the District of Columbia was regulated by a measure (H. R. 6685, approved May 29, Public No. 618) which the President is said to count among the three most important enactments of the session. Revising the law on this subject for the first time since 1908, the act is abreast of the standard of progressive states and may well be taken as a model. Its comprehensive and complicated provisions are a rebuke to propagandists in certain sections who now throw dust by stressing mere minimum age limits without attention to collateral provisions, exceptions, and above all to administrative procedure.

(6) Federal aid to states along well-established lines was endorsed by two statutes especially—apart from the always numerous items in appropriation and special acts. The Ketcham Act (H. R. 9495, approved May 22, Public No. 475) supplemented the Smith-Lever Act of 1914 by an additional and continuing authorization of $1,440,000 annually in order to make possible the employment of 700 more county agents, at least 1,500 additional home demonstration agents, and 1,650 additional leaders of juvenile work. The authorization of $75,000,000 annually for federal aid in road-building was provided for the fiscal years 1930 and 1931 by another act (S. 2327, approved May 26, Public No. 519); and still another (S. 1341, approved May

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21, Public No. 458) somewhat liberalized the treatment of sparsely settled, public-land states.

(7) A ten-year program of forest research, including the maintenance of experiment stations in various regions and involving a maximum annual expenditure of $3,500,000, was authorized by an act (S. 3556, approved May 22, Public No. 466) which the Department of Agriculture declares to be the most fundamental piece of forestry legislation since the Clarke-McNary Act of 1924. Acquisitions for water-shed protection begun under the Weeks Act of 1911 were furthered by an authorization aggregating $8,000,000 for the years through 1931 (S. 1181, approved April 30, No. 326).

(8) Postal rate reduction was again threatened by a conference deadlock,[37] but a compromise between the restoration of the 1920 and the higher 1921 second class rates was reached, and a bill that carries reductions in second, third, and fourth class rates totaling $16,000,000 was approved on May 29 (H. R. 12030, Public No. 566). It is hoped, of course, that lower rates will bring more business and turn seeming losses into gains. This, largely, was the theory behind the act reducing air mail rates (H. R. 8337, approved May 17, Public No. 410). Instead of ten cents a half-ounce, a minimum rate of five cents per ounce was authorized; in addition, air mail contracts may now be made for ten instead of four years.

(9) The brief temporizing act (S. 2317, approved March 28, Public No. 195) by which the Federal Radio Commission was continued with full powers until March 16, 1929 (when its active functions will pass to the Department of Commerce in accordance with the Radio Act of 1927) draws most of its interest from the House amendment directing "an equal allocation" of broadcasting facilities among the five zones and "a fair and equitable allocation" among the states within each zone according to population.[38]

(10) The Settlement of War Claims Act of 1928 (H. R. 7201,

[37] The estimated cuts in the House bill totaled $13,400,000, but in the Senate the ideas of McKellar, ranking Democrat, triumphed over those of Chairman Moses and the slashes were increased to $38,550,000. The presidential eyebrows lifted; Moses despaired of agreement; but at the last minute a compromise was patched up.

[38] The amendment was adopted by 236 to 134 after the House had voted, 168 to 140, against a ruling of the chair sustaining a point of order against it (p. 4767). Action in the Senate was tied up with the question of confirmation of four members of the Radio Commission. They were confirmed on March 30, but the vote on one was said to have been 36 to 35.

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approved March 10, Public No. 122) hardly belongs to the recent session, for it had virtually passed the 69th Congress when it fell victim to the March filibuster. Renewed promptly in the 70th Congress, it slipped through the House as early as December 20 on a division of 223 to 26. With some changes, including the incorporation of provision for Austrian and Hungarian claims, it passed the Senate on February 20 after a minor controversy regarding payments to maritime insurance companies and the amount of compensation to be allowed for ships, patents, etc. The maximum is $100,000,000.

(11) Garnered likewise from the storm-caught crop of 1927, a measure for the settlement of the Serbian indebtedness was revived and passed (H. R. 367, approved March 30, Public No. 231).[39]

(12) Despite seemingly general acceptance of the restrictive policy, immigration continues to incite legislative action. At the close of the session the House committee was authorized to hold interim hearings on more than a hundred bills referred to it. So far as immediate results in the session go, the restrictionists lost a little ground. The date of the operation of the national origins clause in the act of 1924 was postponed for a second time, now to July 1, 1929 (S. Jt. Res. 113, approved March 31, Public Resolution No. 20).[40] A mild concession to criticism of the quota system was proffered in another measure (S. Jt. Res. 5, approved May 29, Public Resolution No. 61) which gave a preferred status, within the quotas, to wives and children under 21 of aliens already in the United States.[41]

[39] This is practically the last of the debt settlements. The failure of a somewhat related piece of legislation may be noted here. H. Jt. Res. 247 proposed to empower the Treasury to join with Austria's other creditors in facilitating a $100,000,000 loan by subordinating their liens to the new loan. The measure was reported in the House and a special rule was offered, but inexplicably neither came to a vote.

[40] "Computations are indefinite and uncertain," remarked Senator Johnson, "and the experts who made them want more time." It seems that the application of the clause would increase the quotas of sixteen countries—(notably Great Britain and Northern Ireland and, in much lesser numbers, Italy and Russia), and would decrease those of fourteen countries (notably Germany, the Irish Free State, the Scandinavian countries, and Poland).

[41] Hearings were held in both houses on bills to extend the quota plan to the Western Hemisphere. With the departments of State, Interior, and Agriculture seemingly in opposition, with the Labor Department's support qualified, and with beet-sugar growers and southwestern railroads and agriculturalists against the change, the progress of such bills promised to be slow. A bill (H. R. 10078) to make deportation procedure more drastic was reported in the House on January 30, almost in the form in which it passed in 1926.

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(13) Fundamental banking legislation was not expected so quickly on the heels of the 1927 act.[42] The conditions under which permission may be given for the interlocking of bank directorates were liberalized (H. R. 6491, passed by the House 141 to 191 on the motion to recommit, approved March 9, Public No. 120).

(14) In the field of judicial procedure, likewise, interest attaches rather to pending[43] than to completed legislation. One act deserves mention. The writ of error was abolished in civil and criminal cases, with the proviso that "all relief which heretofore could be obtained by writs of error shall hereafter be obtainable by appeal" (S. 1801, approved January 31, Public No. 10; amended after consultation with a committee of the Supreme Court, who complained of needlessly increased appeals, by H. R. 12441, approved April 26, Public No. 322).

(15) Apart from the vetoed surplus control bill (above, p. 665) and the measures already mentioned in connection with the principle of federal aid, little agricultural legislation claims attention. Clean-up and other methods for the control of the European corn-borer were contemplated by the authorization of an appropriation of $7,000,000 (H. R. 12632, approved May 24, Public No. 505). An appropriation of $5,000,000 was authorized to aid states in compensating farmers for losses incurred in establishing cotton-free zones against the spread of the pink boll-worm (S. Jt. Res. 129, approved May 21, Public Resolution No. 47).

(16) The shadow of the receding World War shows little tendency to taper so far as the inevitable batch of amendments to adjusted compensation, World War veterans', and other legislation of the kind are concerned. Outstanding, perhaps, was the measure for the retirement of disabled emergency officers, repeatedly blocked in Congress

[42] In the background hung the larger questions involved in the so-called stabilization proposal (the Strong bill, H. R. 11806, for example) and the attempts to restrict speculative credits. In the latter connection, Senator LaFollette's resolution was reported favorably on April 30, 4 Republicans and 3 Democrats being in favor and 3 Republicans and 2 Democrats opposed (S. Res. 113, S. Rept. 1124).

[43] A measure (H. R. 5623) to permit declaratory judgments under certain circumstances passed the House on January 25. A proposal (S. 749) to allow the Supreme Court to make uniform court rules for common law actions was unfavorably reported by a vote of 10 (3 Republicans, 7 Democrats) to 5 (all Republicans). Reaching much further than these, however, is Norris' bill (S. 3151), favorably reported in the Senate, to deprive the federal district courts of such civil jurisdiction as arises from diversity of citizenship. The delay of the anti-injunction bill (S. 1482) has been explained elsewhere (above, p. 655).

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in recent years and passed at last over the President's veto (S. 777, Public No. 506).

(17) On the administrative side,[44] the Welch Act (H. R. 6518, approved May 28, Public No. 555) amended the Classification Act of 1923 with a view to salary increases in the departments, which are likely to aggregate $20,000,000.

Resolutions and Investigations. As long as investigation and admonition retain their relative importance in the rôle of government, the resolutions of a single chamber fall within a realistic view of the legislative product. The effects of the Walsh resolution for an inquiry regarding power utilities may appear in retrospect to have been as real and as far-reaching as those of any recent act of Congress. Even gestures like the McMaster resolution urging immediate tariff revision[45] and LaFollette's motion in support of observance of the tradition of two terms[46] were politically among the most interesting moves of the session. It is the Senate, of course, that has what some call "an absolute rage, a mania, nothing less than a mania, for investiga-

[44] The bill (H. R. 11026) for the coördination of health activities was vetoed (above, p. 661). S. 4382, for changes in the foreign service looking toward more equitable promotions, passed the Senate on May 10.

[45] S. Res. 52, adopted on January 16 by a vote of 54 (12 Republicans, 41 Democrats, 1 Farmer Labor) to 34 (32 Republicans, 2 Democrats). It stated that "many of the rates in existing tariff schedules are excessive", and that "the Senate favors an immediate revision downward of such excessive rates, establishing a closer parity between agriculture and industry . . . . ." On the following day, the House sustained the Speaker in holding that it was not necessary to refer it to a committee; the vote was 183 (176 Republicans, 7 Democrats) to 164 (12 Republicans, 151 Democrats, 1 Farmer Labor) (p. 1659). As for House punctilio when the Senate ventures to take the initiative in money-raising matters, see their return of S. Conc. Res. 4 which sought to interpret the meaning of the phrase "imported broken rice" in the tariff act (p. 1578); also their return of S. 789, with Garrett's tart comment: "In view of the numerous times we have had to perform this act, it would be well to quote it [the Constitution] for the benefit of the other distinguished body" (p. 2776).

[46] S. Res. 128, adopted on February 10 by 56 (18 Republicans, 37 Democrats) to 26 (22 Republicans, 4 Democrats). The immediate excitant (LaFollette said) was the action of the New York state leaders. It declared it to be "the sense of the Senate that the precedent established by Washington . . . . has become, by universal concurrence, a part of our republican form of government, and that any departure from that time honored custom would be unwise, unpatriotic, and fraught with peril to our free institutions." The original contained the additonal words: "that the Senate commends observance of this precedent by the President." On Fess' motion, neatly accepted by LaFollette, this phrase was dropped.

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tion."[47] In the House, apart from an interim inquiry by a special committee into the conditions of incarceration of federal prisoners, the only authorization of an investigation was the defensive step of creating a special committee to look into campaign expenditures "in the case of an outstanding occurrence where it should seem that something should be done."[48]

Several of the Senate investigations were intrusted to special committees: the wind-up of the inquiry into the senatorial primary elections of 1926 (S. Res. 10 and 178. Above p. 652); preconvention and election campaign expenditures in 1928 (S. Res. 214 and 234), enlarged to include war-time sugar transactions (S. Res. 255); the New Jersey senatorial primary of 1928 (S. Res. 232); and appointments and dismissals in the civil service since 1919 (S. Res. 154). A larger number of inquiries were put in charge of standing committees or their subcommittees. The committee on public lands and surveys was instructed to revive the investigation of the naval oil leases, now with special reference to the Continental Oil Company (S. Res. 101, adopted in executive session on January 9). Its subsequent hearings elicited Will Hays' interesting after-thoughts, provoked R. W. Stewart's defiance and unsuccessful prosecution for contempt,[49] and

[47] The sneer was that of Senator Bruce, who added that Walsh of Montana "seems to find the same degree of pleasure in investigation that some men find in intoxication" (p. 3080).

[48] H. Res. 232. The euphemistic phrase is quoted from the explanation of Mr. Snell in offering the resolution a day before the close of the session. "It is not," he said further, "to be a general snooping committee to go all over the country . . . ." (p. 10730). The members are Lehlbach, N. J., chairman, Newton, Minn., Nelson, Me., Republicans, and Ragon, Ark., and Black, N. Y., Democrats.

[49] On February 2 and 3, Stewart, chairman of the board of the Standard Oil Co. of Indiana, refused to answer two questions regarding the Continental Trading Co. On February 3, without debate or a record vote, the Senate ordered his arrest in order to compel an answer (S. Res. 132). Taken temporarily from the custody of the sergeant-at-arms by virtue of a writ of habeas corpus, he was remanded on February 23 and thereafter prosecuted on appeal to the Court of Appeals of the District of Columbia. On April 24 he testified before the Senate committee. The order of arrest was accordingly vacated by the Senate, but the resolution (S. Res. 207) expressly indicated a desire that the prosecution of Stewart for the crime of contempt (for which he had been indicted in the meantime) should take its course. He was brought to trial on May 30 and acquitted on June 14, after a jury deadlock of over twenty hours. S. Res. 207 had directed the district attorney to look into the possibility of an indictment for perjury. This remains open.

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led to the filing of a report at the close of the session.[50] The committee was also empowered to look into leases and contracts in the Salt Creek field in Wyoming (S. Res. 202, adopted April 30). Other investigations assigned to various standing committees of the Senate were: strike conditions in the coal fields (S. Res. 105 and 249);[51] the administration of Indian affairs (S. Res. 79); the decline of cotton prices despite the short crop of 1927 (S. Res. 142); the conduct of the Dallas reserve bank (S. Res. 152); the sinking of the S-4 (S. Res. 205);[52] the extension of national parks (S. Res. 237); the alleged purchase of presidential postmasterships (S. Res. 193); and unemployment and the means of its relief and avoidance (S. Res. 219, not to be confused with S. Res. 147, which asked information on unemployment from the Department of Labor). The ability to draw stipulated amounts from the contingent fund of the Senate is a vital feature of such authorizations. In the current legislative appropriation act the item for "inquiries and investigations" has been increased from $100,000 to $250,000.

A number of the Senate's resolutions were directed to administrative agencies. Four requests for special studies went to the Tariff Commission; three others that called for fresh investigation went to the departments; sixteen—"questions," some of them, in the American manner—asked for information already on hand regarding precise points. The Federal Trade Commission was ordered to report on chain stores (S. Res. 224) and on power utilities (S. Res. 83). The original

[50] S. Rept. 1326, Part 2, which is printed with useful chronological summaries of the whole naval oil reserve scandal in the *Record*, May 29, pp. 10649–74. The original investigation had been ordered by the 67th Congress (S. Res. 282, adopted April 28, 1922), but had come to a halt in 1924 when Sinclair refused to testify.

[51] An inquiry was conducted in the field under S. Res. 105, adopted February 16. Senator Reed of Pennsylvania remarked at the time: ". . . . the greatest industry save agriculture is in a similar plight . . . . there exists at this time the most intense suffering on the part of all who are in that industry, union and non-union, operator and miner . . . ." (p. 2410). Numerous bills were introduced, aimed at the chronic disorganization, but no action was taken.

[52] Originally the Administration proposed that the investigation should be by a presidential commission. This passed the House on January 7 (H. Jt. Res. 131) and was reported in the Senate by a strict party vote in committee. It was amended on the floor in favor of a joint congressional committee by a vote of 51 (8 Republicans, 42 Democrats, 1 Farmer Labor) to 32 (all Republicans). In the end the Senate voted to have its own inquiry, since the House would not accept the conference report.

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resolution on the latter point proposed that the inquiry (stressing holding-company control and methods used in influencing public opinion and elections) should be conducted by a special committee of the Senate. An amendment offered by Senator George was adopted, however, referring the matter instead to the Federal Trade Commission.[53] The vote in this significant roll call was 46 (28 Republicans, 18 Democrats) to 31 (11 Republicans, 20 Democrats) (p. 3125). The outcome has been unexpected. Scored severely in the debate, the commission has been on guard. The direction of the inquiry has been turned over to McCulloch of Arkansas, a new member. The surprise has been the aggressive competence of Robert Healy, a Bennington lawyer who was made general counsel of the commission scarcely a month before the investigation started, and who has been actively in charge of the hearings.

Even the Supreme Court is not beyond the aim of resolutions of the resourceful Senate. On May 7, by a vote of 46 (26 Republicans, 19 Democrats, 1 Farmer Labor) to 31 (22 Republicans, 9 Democrats), a resolution offered by Senator Norris was adopted in which the Senate "respectfully requests the Supreme Court to permit the said Donald R. Richberg, as counsel for the said National Conference on Valuation, to intervene in said O'Fallon case for the purpose of making oral argument and filing a brief therein" (S. Res. 222, p. 8271).

Appointments. In executive session on March 16, following an adverse committee report of 10 to 7, the Senate refused to confirm John J. Esch for reappointment to the Interstate Commerce Commission. The vote was 39 to 29. Mr. Esch was doubtless opposed in part because of his co-authorship of the Transportation Act of 1920. The immediate cause, however, was the fact that his change of vote had brought about a decision in favor of the northeastern coal fields in a recent turn of the long-drawn lake cargo controversy.[54] In view of the previous tradition of virtual life tenure on the Interstate Commerce

[53] The Independent Offices Appropriation Bill (H. R. 9481), as reported, contained a stipulation which would have limited "economic" investigations by the Federal Trade Commission to those directed by *concurrent* resolutions; but this, fortunately, was striken out in committee of the whole, January 23.

[54] One of the many reverberations of the lake cargo cases was S. Conc. Res. 10, which was adopted on February 9 with one opposing vote, but which was not acted on in the House. In the thin disguise of a request for information, it sought to rebuke the commission for "decisions . . . . in any sense influenced by the competitive advantage or disadvantage of the producers in one state, district or section . . . . ."

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Commission (in the sense that appointments would be renewed), the Esch incident raises even more sharply than the rejection of C. E. Woods on January 25, 1927, the question of the future of the regulatory commissions.

Appropriations. There is no longer tall talk about lower expenditures. New slogans are heard. "Prosperity and good times," observes the annual review of the chairman of the Senate committee on appropriations,[55] "demand increased as well as new governmental functions." After all, an impression of general retrenchment could not be floated indefinitely even on the favoring tides of circumstances as mighty as the reduction of the annual interest payments from $1,024,000,000 in 1920, when the debt was at its peak, to $670,000,000 (an estimate) in 1929. The appropriations of the recent session—totaling $4,628,045,035—exceeded those of the preceding year by $478,542,508. Even when allowance is made for $120,000,000 thrown on the new Congress by the failure of the second deficiency bill in the Senate filibuster in March, 1927, the increase is $238,543,508.[56] If there is room for cavil here, it should be directed to the false face previously put on inevitable increases for the normal operations of government. One wonders how much party advantage, let alone statecraft, there is in the turn given by the ranking Democratic member of the House committee on appropriations: "The question is, How long will the business and taxpaying interests of the country stand this rapidly mounting increase of expenditures in the face of repeated assurances given in the past few years that federal expenditures would be reduced or held down to a minimum" (p. 10918).

[55] *Congressional Record,* Appendix, June 7, 1928, p. 10907. The data in the text and in the table on p. 680 are drawn from the summaries presented in this issue, supplemented by some information obtained from M. C. Sheild, the experienced head clerk of the House committee.

[56] Chairman Wood offers the following appropriations in explanation of the increase: war claims act of 1928, $50,000,000; public buildings, under the act of 1926 and the act for the District, $44,635,083; extension of foreign service building program, $2,000,000; aviation increases, $21,732,818; military post construction, $13,819,975; naval construction under the act of 1924, $24,300,000; ammunition storage facilities, $3,108,159; increase for rivers and harbors (Missouri River) $5,886,310; relief of Vermont, New Hampshire, and Kentucky in connection with roads and bridges, $5,197,294; Cape Cod Canal bonds, $6,230,000; flood control, $15,000,000. The modesty of the last item should be noted; quite different from appropriations are *authorized* appropriations, which may extend over many years. It may be added that for the fiscal year 1929 the three items of interest, debt charges, and veteran's bureau take 46.7 per cent of the total appropriations exclusive of the Post Office Department.

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RECAPITULATION OF APPROPRIATION ACTS, FIRST SESSION OF SEVENTIETH CONGRESS

Title of Act	Budget estimates, Seventieth Congress, first session	Totals of bills as reported by House Committee on Appropriations	Appropriations, Seventieth Congress, first session	Increase (+) or decrease (−) appropriations compared with budget estimates	Increase (+) or decrease (−), first session Seventieth Congress compared with second session Sixty-ninth Congress
Regular acts, fiscal year 1929					
Agriculture, Department of	$138,129,839	$132,308,849	$139,138,793	+$1,008,954	+$10,637,054
District of Columbia	[a]37,693,686	37,035,235	37,625,208	−68,478	+1,342,823
Independent offices	527,553,802	526,193,111	527,593,111	+39,309	+14,689,303
Interior Department	[b]273,165,839	272,430,789	272,656,039	−509,800	+12,351,019
Legislative Establishment	18,072,146	17,113,517	27,746,893	−325,253	+1,313,113
Navy Department	361,264,907	359,190,737	362,145,812	+880,905	+45,930,505
Departments of State, Justice, Commerce, and Labor:					
State	13,950,955	13,875,955	13,955,955	+5,000	+1,942,068
Justice	26,874,742	26,657,730	26,759,342	−115,400	+358,453
Commerce	38,071,460	37,545,960	38,136,960	+65,500	+1,509,510
Labor	10,960,840	10,968,340	10,968,340	+7,500	+833,824
Total	89,857,997	89,047,985	89,820,597	−37,400	+4,643,955
Treasury and Post Office Departments:					
Treasury	301,510,218	298,387,018	296,392,018	−5,118,200	+158,810,925
Post Office	768,050,042	764,950,042	764,950,042	−3,100,000	+9,613,842
Total	1,069,560,260	1,063,337,060	1,061,342,060	−8,218,200	+168,424,767
War Department:					
Military	309,781,755	308,766,711	309,601,568	−180,186	+28,982,683
Non-military	82,080,258	80,433,158	88,915,653	+6,835,395	+9,752,809
Total, War Department	391,862,013	389,199,869	398,517,221	+6,655,208	+38,735,492
Total, regular annual acts	2,907,160,491	.....	2,906,585,736	−574,755	+298,058,133
Deficiency acts					
First, 1928	200,774,524	198,916,264	200,936,947	+162,422	.....
Second, 1928	155,672,204	99,032,885	146,017,757	−9,654,446	.....
Total, deficiency acts	356,446,729	297,949,150	346,954,705	−9,492,023	+161,342,371
Total, regular annual and deficiency acts	3,263,607,220	3,183,806,303	3,253,540,441	−10,066,779	.....
Miscellaneous relief, claims, and other acts (estimated)	[c]65,000	.....	[d]800,000	+735,000	−9,610,082
Total, regular annual, deficiency and miscellaneous	3,263,672,220	.....	3,254,340,441	−9,331,779	+449,790,422
Permanent and indefinite appropriations	1,373,704,593	.....	1,373,704,593	.....	+28,752,085
GRAND TOTAL	4,637,376,814	.....	4,628,045,035	−9,331,779	+478,542,508
GRAND TOTAL, EXCLUSIVE OF POSTAL SERVICE, FROM POSTAL REVENUES	.....	.....	3,851,070,493	.....	+456,904,166

[a] Exclusive of $42,500 for Freedmen's Hospital transferred to Interior appropriation bill.

[b] Includes $550,000 transferred from first deficiency and $42,000 from District of Columbia estimates and exclusive of $222,000 transferred to first deficiency bill.

[c] House Document No. 149, Water Boundary, United States and Mexico.

[d] Estimated.

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The total appropriations have been so invariably under the budget estimates that the circumstance can be taken for granted, although several instances seem to have had little influence on editorial stereotypes regarding a porcine Congress. A net reduction of $9,331,779 was "reached by a large number of small increases and decreases widely distributed over the entire service."[57]

The practice of routing replies by executive agencies to requests for comment on pending legislation through the Bureau of the Budget, in order to secure a statement whether or not the measure is compatible with the "financial policy of the President" (Budget Circular 49), has evoked criticism that is likely to grow. An interesting though inconclusive discussion of this point was instigated on March 10 by Representative Robert Luce (pp. 4653–9). The gist of his position lay in the distinction he conceived between original legislation and appropriations. "The legislating committee," he said, "is to concern itself with policy and principle; the appropriating committee with prudence and proportion. It is the appropriating committee that should consult the Bureau of the Budget." Mr. Luce's argument gained most of its point, however, from the fact that special rules and suspension of the rules are alike beyond the reach of ordinary bills, that Calendar Wednesdays never go round,[58] that of necessity the run of legislation must pass on the consent calendar, and that at least one member has announced his intention to "object to the consideration of any measure relating to finance that does not contain a formal report from the Director of the Budget."

Congress and Foreign Affairs. The rôle of criticism was not wholly neglected, but in the end even the Senate withheld its hand. Nicaragua was, of course, the chief vexation. Various censorious resolutions were introduced, but, aside from many sporadic speeches, action on the floor was confined to attempts to exert control through appropriations. Such was Senator Blaine's proposed amendment to the naval appropriation bill (H. R. 12286) stipulating that after December 25,

[57] There were only three noteworthy increases: agricultural, $1,008,954, due to an addition of $1,000,000 for roads and trails; war, $6,655,208 because of an item for the Missouri River; naval, $880,905, because of increase of authorized enlisted strength.

[58] Eight only of the 46 committees had been reached up to March 10, with about 23 possible Calendar Wednesdays left for 38 committees. Royal Johnson remarked: "The committee of which I am chairman (immigration and naturalization) has not been called on a Calendar Wednesday probably for six years" (p. 4657).

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1928, no funds carried therein should be used to pay "any expenses in connection with acts of hostility against a foreign power, or any belligerent intervention in the affairs of any foreign nation, unless war has been declared by Congress or unless a state of war actually exists under recognized principles of international law." Before the vote was taken this was amended so that it related specifically to Nicaragua. After five days of debate, the rider was rejected by a vote of 22 (7 Republicans, 15 Democrats) to 52 (33 Republicans, 19 Democrats).[59] Senator Borah spoke against it, pensively: "I was opposed to sending troops to Nicaragua in the first place, and I am most anxious to see them brought out of Nicaragua. But I do not feel that we can come out of Nicaragua in disregard of a situation which we ourselves have created and in disregard of obligations which we have assumed" (p. 7189). A somewhat similar attempt failed earlier in the House during the consideration of the War Department appropriation bill (H. R. 10286), when a rider offered by Collins of Mississippi was rejected in committee of the whole by 71 to 103 and, on a motion to recommit at the time of final passage, by 125 (111 Democrats, 11 Republicans, 2 Farmer Labor, 1 Socialist) to 229.[60]

Treaties seemed to move easily. Including conventions, ratification of fourteen was assented to during the session.[61] Notable among these

[59] Senator McKellar's still more guarded substitute was lost, 20 to 53; Heflin's more drastic one, 15 to 60. On April 16 the Senate had requested the Secretary of the Navy for information about costs, losses, etc., in connection with operations in Nicaragua (S. Res. 198, p. 6772).

[60] Pp. 2904, 2940. The proposed rider read: "Without authorization by Congress no part of the funds appropriated by this act shall be expended in the transportation of any portion of the armed forces provided for in this act to the territory of a foreign country over which the United States does not possess sovereign jurisdiction."

[61] Apart from the arbitration treaties with France, Germany, and Italy, these were: Netherlands, protocol interpreting arbitration treaty of 1913 (p. 3640); Poland, extradition treaty (p. 3640); Honduras, extradition treaty (p. 4890), and another respecting friendship, commerce, and consular rights (p. 10210); Mexico, convention regarding livestock (p. 5709); Greece, smuggling alcoholic beverages (p. 10209); Latvia, friendship, commerce, and consular rights (p. 10205); an additional protocol to the Pan American Sanitary Convention (p. 3639); the new International Radiotelegraph Convention (p. 5305); a convention for the unification of rules regarding bills of lading (p. 5376); and a revision of the International Sanitary Convention of 1917 (p. 5380). Of the 14, seven had been signed in 1928; only two antedated 1927. It may be added that solicitude for the pending treaty on gas warfare led Theodore E. Burton to attempt to eliminate an item of $55,000 for gas masks from the War Depart-

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were three arbitration treaties: with France, signed on February 6 and assented to on March 6; with Italy, signed on April 18 and assented to on May 10; and with Germany, signed on May 5 and assented to on May 10. Delay, on the other hand, met Senator Gillett's proposal regarding the world court: "that the Senate . . . . respectfully suggests to the President the advisability of a further exchange of views with the signatory states in order to establish whether the differences between the United States and the signatory states can be satisfactorily adjusted." There was fragmentary debate in the Senate, as on April 9 (pp. 6313–8) and May 1 (7809–14). Why pass such a resolution, argued Borah, unless the Senate first reopens the question of Reservation Five? On May 23 the committee on foreign affairs deferred action by a vote reported to have been 9 (7 Republicans, 1 Democrat, 1 Farmer Labor) to 8 (2 Republicans, 6 Democrats.)

Space has not permitted more than incidental comment on business still pending. It would be a short view of the process of legislation, however, that would seek to appraise the real work of any Congress merely in terms of the measures, resolutions, and treaties finally approved. Usually these are the harvesting—often the easy harvesting—of suggestions that have been long in ripening for the lawmaker's sickle.[62]

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ment appropriation bill; his motion failed by 21 to 70 (p. 2762). The House assumed modest initiative in treaty-making in H. Jt. Res. 268, Public Resolution No. 56, requesting the President to negotiate treaties for protection from liability to military service. Borah's resolution (S. Res. 157) that there should be a restatement of the rules of war at sea in anticipation of the 1931 armament conference remained in the hands of the committee. Nor was there action on far-looking suggestions like S. Jt. Res. 14, by Senator Capper, for the renunciation of war. Burton's resolution (H. Jt. Res. 183) to forbid the export of arms to belligerent countries except with the consent of Congress was reported in the House on January 30, only to encounter opposition which seemed to include the secretaries of war and the navy.

[62] Each year, happily, sees the tendency stronger in Congress to utilize the staffs of the able legislative counsel of Senate and House; they are never adjourned.

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FOREIGN GOVERNMENTS AND POLITICS

EDITED BY WALTER J. SHEPARD
Ohio State University

The New French Electoral Law and the Elections of 1928. The year 1928 will witness national elections in at least three of the great western democracies of the world. The first of these important electoral contests took place in France on the last two Sundays in April. Following a campaign of unique character, some 8,000,000 voters went to the polls to pass judgment upon the record of M. Poincaré's National Union government—a government headed, strangely enough, by the same man whom the electorate had seemingly repudiated four years earlier. Not only was this contest unusual in that it brought into play certain new kinds of campaign technique, but when carefully analyzed in the light of the operation of the new electoral law, the outcome almost defies any logical interpretation. On the surface, it has been heralded as a great personal triumph for Premier Poincaré as the "savior of the franc." But more than that one cannot say; for he presented his case without the least semblance of a political program, and the party complexion of the newly elected Chamber of Deputies is baffling. Nor is one certain that it faithfully reflects the existing state of public opinion in the nation.

A resumé of the provisions of the latest electoral law, enacted in July, 1927, is necessary for a full understanding of what happened at the polls. In France, as all students of politics know, "electoral reform" is a perennial question. Since 1871 five successive systems of voting have been used: to 1885, the *scrutin uninominal*, or *d'arrondissement*; from 1885 to 1889, the *scrutin de liste*; from 1889 to 1919, the *scrutin uninominal* again; from 1919 to 1927, the *scrutin de liste*, with partial proportional representation; and now a reversion once more to the old *scrutin uninominal*. Hardly was the Chamber of 1924 organized and under way when agitation for a return to single-member constituencies began. In 1925 the Senate voted in this sense by a decisive majority. It was obvious that no one, regardless of party affiliation, wished to go on with the bizarre law of 1919. But agreement upon a substitute system was another matter. In principle, the groups on the Right favored the adoption of a full-fledged plan of proportional representation with the list system; but they could not muster a majority for such a thoroughgoing change as that, even though

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Poincaré and Marin in the cabinet apparently wanted it. On the left of the Chamber, particularly among the Socialists, there had been at one time or another in the past many public declarations in favor of P. R. But the Radical-Socialists occupied the key position both on the floor of the Chamber and in the cabinet, and they would have no more of the "unhappy coalitions" engendered by P. R. as it had operated since 1919. Nor did they care to continue with an electoral device which made for perennial fighting within party groups for the strategic first place on the list.[1] The old argument that the deputy ought to be in direct relation with his electors was also advanced. More generally, all the radical and center groups had come to feel that to return to the single-member system of representation would be to construct a workable defense against Communist gains in the Chamber; and in this their instincts were sound, as the results of the recent election strikingly proved.

Though opposed to the *scrutin uninominal* on principle, M. Poincaré refrained, for fear of endangering his fiscal program, from making the matter a question of confidence—this notwithstanding that two or three others, notably M. Marin, stood with him. In fact, he did not even attend the acrimonious debates on the proposition in the Chamber last summer. The Government *projet* was handled mainly by M. Sarraut, minister of the interior and high in the counsels of the Radical-Socialist party. From July 2 to the date of final enactment, July 21, the measure received rough treatment from an unruly Chamber. The cabinet proposal called for only 587 deputies; the bill ultimately adopted raised the number to 612. The Government desired to count only the French population in apportioning representation; the Chamber decided to include aliens in determining the ratio, a change that was demanded principally by the radical deputies from the Southwest and the Midi, into which thousands of Italian and Spanish immigrants have poured since the war.[2]

Added to this was a species of flagrant gerrymandering by the Commission on Universal Suffrage in favor of members of the Chamber who expected to stand for reëlection. The *arrondissement* was to be

[1] The writer is indebted to M. Barthélemy, the distinguished chairman of the Commission on Universal Suffrage in the Chamber, for this illuminating insight into the attitude of the radical parties toward P.R.

[2] Only two Radical-Socialist votes were cast for the amendment to exclude foreigners. Cf. *Le Temps*, July 11, 1927. The alien population of France is now nearly two and a half millions, or more than double what it was before the war.

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retained as the electoral unit if its population was no smaller than 40,000, and no larger than 100,000. In a case where the population was under 40,000, the fusion of two adjacent *arrondissements*, or parts of *arrondissements*, was to take place; where the figure 100,000 was exceeded there was to be a division into two or more separate circumscriptions. But the electoral map of France finally arrived at contains no fewer than forty-nine exceptions to the rule of the statute.[3] Seventeen constituencies have less than 40,000 population each, while there are thirty-two with more than 100,000. The former include the district of Castellane, in the department of the Basses-Alpes, with 25,258; Briancon, in the Hautes-Alpes, with 25,358; and Villefranche, in the Haute-Garonne, with 38,669. In the group of large constituencies are to be found two with over 130,000 population: the 6th district of Bethune, in the Pas-de-Calais, with 130,308; and the 10th district of Saint-Denis, with 133,947. Nearly all of this latter group are urban in character, notably the "red suburbs" of Paris. Stated differently, these inequalities in the distribution of population mean that 588,000 people have seventeen deputies, or one to 34,600; whereas 3,536,000 are assigned to only thirty-two, or one to 110,500. The Commission's public justification of these discrepancies was that "it was necessary to maintain an equilibrium between the representation of the cities and the countryside."[4] Between the lines, however, anyone who, as did the writer of these pages, attended the bitter debates on the electoral bill in the Chamber could read the sordid story of bargaining for individual and party advantage. It is this fact that also largely explains why the number of deputies was increased by twenty-five, and why a million francs were added to the budget at a time when the Government was refusing to meet the demands of subordinate civil servants for a minimum salary of 8,000 francs, with retroactivity to July, 1926.[5]

Once the struggle over representation was settled, by a majority that consisted mainly of the old *cartel des gauches*, the other provisions of the new law were written quickly. Only two of these need be men-

[3] Data taken from the excellent analysis of the law in *Le Temps*, April 9, 1928.

[4] Quoted in *Le Temps*, July 7, 1927.

[5] It was humorously suggested in the Chamber that if 612 deputies were better than 587, why not 1,000? In reply, M. Albert Milhaud contended that since France was now more "vast" in area than ever, with the return of Alsace-Lorraine, it required a larger chamber; and even in the new plan there would be only 590 metropolitan (non-colonial) seats. Cf. *Le Temps*, July 12, 1927.

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tioned here. First is the change whereby the second voting, or *ballottage*, takes place, not two weeks, but only one week, after the day of the first polling.[6] This modification was apparently designed to discourage bargains and temporary coalitions between local party groups, though its efficacy proved dubious in the actual test between April 22 and 29. The second innovation has to do with the printing and distribution of ballots and campaign circulars. In Articles 8 to 14 of the law, it is provided that in each *département* a commission headed by the judge of the civil tribunal and composed of all candidates standing for the chamber, or their designated agents, shall meet at least twelve days before the polling day to arrange for the printing and distribution of two *bulletins de vote* (ballots) and one circular, to be sent post-free to each qualified voter, and one *bulletin de vote* per voter, to be delivered to each *mairie* for use at the polls. The cost of printing is apportioned among the candidates, but whether a candidate takes advantage of the arrangement is left optional.[7] As secretary of the commission, the *greffier* receives a perquisite of 100 francs per candidate![8]

So far as the other phases of registration and election administration are concerned, the new law does little or nothing to improve the laxity that has long prevailed at the polls in France. Voting by mail was proposed in the Chamber, but the matter was laid over for further study, on the grounds of complexity. A similar fate befell an amendment requiring the presentation of a *livret civique*, with the voter's photograph, at the polls. One deputy amused the Chamber by recounting his experience in "having caused the name of a dog to be removed from the electoral lists;"[9] and M. Pierre Mille, a subtle French humorist, suggested in the press during the recent campaign that since it appeared impossible "to prevent the votes of dead men being recorded, the practice should be regularized by giving everyone the right of disposing of his vote by testamentary disposition. It would then logically follow that, the right of dead men to be electors having been recognized, their right to be elected could hardly be refused, and

[6] As before 1919, an absolute majority is necessary for election the first day, while a plurality, provided it equals one-fourth of the registered voters, is sufficient in the *ballottage*. New candidacies may be entered up to Wednesday night preceding the polling.

[7] Apparently most of the candidates standing in the recent election did so.

[8] One Paris paper intimated that this may have been the reason for the appearance of so many "independent" candidates in the department of the Seine.

[9] Quoted in *Le Temps*, July 10, 1927.

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everyone should be allowed to indicate, by similar testamentary disposition, the person who should deputize for him in case, after death, he should be elected a deputy."[10] The problem of election mechanics has never seriously concerned French democracy. Perhaps the day will soon come, however, when the presence of a large alien population will bring the questions of permanent registration and the canvassing of votes to the forefront of French politics.[11]

The recent electoral campaign really began as soon as the Chamber of Deputies adjourned on March 17. Since the first polling day was fixed for April 22, this allowed six weeks for the campaign, a somewhat longer period than usual in French parliamentary elections. Under the new electoral law, candidacies could be declared up to April 17; and what an avalanche of candidates there was! Even for multi-party France, all records were shattered. A total of 3,645 men contested for 612 seats, an average of almost six per seat. In the department of the Seine there were 856 candidates for 59 seats, or fifteen for each place to be filled. But around 1,000 of the total number of candidates stood as independents. Many of them, for the sport of it, announced themselves as defenders of the interests of the "barbers," the "butchers," the "*concierges*", or the "nougat-makers"—"*fantaisistes*" they were dubbed by the Parisian press. A certain M. Duconnaud, landscape gardener by trade, stood for election in the Latin Quarter on a platform that promised to allow hunting in the zoo every Friday, to eliminate poverty, to place moving sidewalks on the Boulevard St. Michel, to build a ship canal that would permit transatlantic liners to dock close to the Sorbonne, and to establish a meteorological institute for barbers "who talk about the weather all the time without knowing a darned thing about it." But it seems that he went too far even for Gallic humor when he proposed to abolish old age. He received only a paltry 200 votes.[12]

Although the campaign was, comparatively, a calm contest, certain forms of propaganda and electoral devices were utilized for the first time in France. From Paris to the provinces airplanes carried bundles of campaign leaflets and handbills to be showered upon villages dotting the countryside. For the first time illustrated colored posters appeared on the "official" billboards, whose space is allotted among the various

[10] Quoted in the *London Observer*, April 22, 1928.

[11] Twice during the debate on the electoral bill woman suffrage amendments were defeated. Cf. *Le Temps*, July 10, 1927.

[12] Quoted from the *Chicago Tribune*, April 30, 1928.

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parties and candidates by the police. With their coffers apparently well stocked with funds, the conservative parties were able to resort to this type of appeal much more extensively than were the poorer radical groups. Communist billboards in front of the polls were used to remind the workers of their May-day demonstrations. One particularly interesting innovation was a caricature of the *cartel des gauches* in comic script, showing how its repeated "stupidities" could only culminate in an utter ineptitude to solve the financial crisis of 1926, and then how its leaders had to turn in despair to Poincaré, the implication being that if the Left won in 1928 history would repeat itself.

All in all, the campaign was waged upon the plane of personalities, or rather, around a single person—Poincaré. For the most part, the official declarations of the parties (except the Communists) were either vague banalities or appeals to deep-rooted prejudices or bogies. Each candidate altered his individual appeal to fit his own constituency; and in the country districts especially, where formal speeches counted for little and visits and handshaking for much, the fight often became bitter and "intestinal" in character. To prevent the sowing of too much discord, the minister of commerce finally forbade the diffusion by radio of any political discourse, whether by state or by private stations.[13]

M. Poincaré made only two important speeches during the campaign—at Bordeaux and Carcassonne, on March 25 and April 1, respectively. Speaking in the heart of "radical" territory, where M. Briand had on the eve of the 1924 elections founded the left bloc, the present premier vigorously appealed to the country to support unequivocally the National Union. "The voters had to pronounce themselves for or against *l'union nationale*, not for or against a political formula, but for or against a policy that for two years had been the policy of France."[14] To guide the electorate through the maze of meaningless party declarations, he suggested a four-fold classification of candidates: (1) those Conservatives and Radicals "who have stood by us in the most difficult hours;" (2) the left-wing Radicals, like M. Daladier, titular leader of the Radical-Socialist party, "the intermittences of whose confidences in us have been at times disconcerting;" (3) the Socialists, whose opposition has at least been loyal, and who,

[13] *Le Temps*, April 16, 1928.

[14] As paraphrased by *L'Europe nouvelle*, May 5, 1928.

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"if they have not voted for us, have abstained from violent assaults upon us, so as not to hinder an experiment that they regard, no doubt, as sterile, but, nevertheless, as inoffensive;" and (4) the Communists. The latter were vigorously denounced as the party that "takes its orders from abroad," that would destroy parliamentary institutions altogether, that "would sow revolt in our barracks and arsenals."[15] This was a tactic designed to damage the Socialists by scaring away from them middle-class support, and perhaps even to strengthen the Communists by driving into their ranks workers who would resent having their party stigmatized as "loyal opposition."[16] With a weaker Socialist group in the new Chamber, there would be less chance for a reëstablishment of the old left bloc.

But at no time did M. Poincaré state just what he was going to do with the franc or when he intended to do it. It was for a "blank check" he was asking. The party truce must continue for four years more so that his program, whatever it was, could be carried to completion. At Carcassonne, it is true, he intimated in carefully guarded terms a willingness to consider proposals to "commercialize" the reparations and debt payments along the lines suggested by various German and American bankers,[17] though such a possibility must not be regarded as affecting in the slightest the Rhineland occupation. No longer the uncompromising nationalist of the Ruhr days, but a man much chastened in spirit, he gave moderate praise to the policy of Locarno and Franco-German *rapprochement*.[18] Whatever one's party member-

[15] Cf. *Manchester Guardian Weekly*, March 30, 1928.

[16] The opposition press characterized this tactic as *"la politique du pire"*—strengthening the extremes in order to weaken the center.

[17] Much was made of Poincaré's statement on reparations and debts by certain American newspapers, notably the *New York Times* (cf. issue of April 2, 1928). But judging from the caustic comments in different French journals, ranging in position from *Le Matin* to *Le Populaire*, one doubts whether any such broad significance can be attached to the Premier's remarks. *Le Petit Journal* ironically advanced the suggestion that all nations use the same day for their national elections, so that the existing crop of "fantastic proposals and projects" (referring to foreign comment on Poincaré's statement) might be squelched. Quoted in *Le Temps*, April 7, 1928. Nothing is likely to be done by France on the Dawes plan revision or debt settlements until after the American election in November. Cf. Senator Berenger's statement quoted in the *New York Times*, June 28, 1928.

[18] At the same time, the conservative republican groups could not refrain from resorting to the use of lurid campaign posters depicting the "Hun" in a most menacing attitude and implying that France had been left defenseless in

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ship, by voting for Poincaré and the national union he would be supporting "stabilization within as well as without the borders of France." Or, as the conservative *Temps* differently phrased it, "any party can be unionist; and unionists may exist in any party—except the Socialists and Communists, who preach class war."[19]

The only real opposition to Poincaré among the "republican" groups came from the left wing of the Radical Socialists. The latter found themselves on the horns of a difficult dilemma throughout the campaign. Officially, they had split into two groups as far back as October, 1927, when a minority under the leadership of M. Franklin-Bouillon withdrew from the party congress because it preferred to align itself with the parties of the center and continue to support the Poincaré government. The official majority, after electing a new leader, M. Daladier, adopted a resolution declaring that the existing party truce could be only a "transitory form of parliamentary life." This faction was thinking in terms of another working union with the Socialists on the left, once fiscal stabilization was achieved. Its election manifesto six months later laid special stress upon the Herriot policy of peace, even to the resurrection of the Geneva Protocol and the establishment of equal educational opportunities for the children of all classes up to the university.[20] Small wonder, then, that its press —influential papers like *L'Oeuvre*, *La Volonté*, and *Le Soir*—looked askance at the Carcassonne speech of Poincaré, because it implied the formation of a great "center" bloc that might give the Premier a free hand in the new parliament. Nor is it surprising that there was complaint that their former leaders, Herriot and Sarraut particularly, should have been "lassoed" into his government and made to serve his purpose. For M. Herriot himself, obviously in a rather delicate position at best, was preaching from the platform at Lyons the doctrine that "there is no socialist franc, no radical franc, but only a national franc."[21] The radical press seemingly derived its greatest delight, however, in scathingly chastising Franklin-Bouillon as a

1914 by the pacifist policy of "radical" governments. "Let no good Frenchman be duped again!" Such chauvinistic appeals, however, lack the effectiveness they once had in France.

[19] April 5, 1928.

[20] By this was meant the establishment of what is now known in France as *l'école unique*, whereby secondary education would no longer be institutionally distinct from primary, but would be free for all meritorious children, regardless of economic or social position.

[21] Cf. *Le Temps*, April 21, 1928, for a resumé of his most notable speech.

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"renegade" to the cause of anti-clericalism and true democracy; although his attempted "radical union league" cut a rather sorry figure in the outcome of the campaign.

As for the Socialists and Communists, the only "undiluted" elements in the opposition to Poincaré, a few words will suffice. Under M. Léon Blum's "professorial" direction, the former spent most of their time trying to eradicate any lingering notion that they were "revolutionary" in Moscow's meaning of the term. Article after article appeared in *Le Populaire*, Blum's newspaper, studiously avoiding any mention of the items in the orthodox socialist program that might alarm the *milieu* of the subaltern civil servants, small farmers, and modest *rentiers*. On the other hand, the Communists, branded by conservative speakers and placards as "the party of assassins" taking orders from Moscow, conducted intensive propaganda among the industrial workers and soldiers. Since one of the last acts of the old Chamber had been to refuse to release from prison Marcel Cachin and three other Communist deputies for having incited French soldiers to mutiny and desertion, *l'Humanité*, the official Communist organ, could assume a "martyristic" pose—a maneuver that probably gained thousands of votes for the party at the polls.

One other incident of the electoral campaign has, in view of the candidacy of a Catholic for the presidency this year, at least an indirect interest for Americans. This is the extraordinary edict issued by Cardinal Dubois, archbishop of Paris, against the Royalist journal and organization *l'Action française*, of which the co-editor is the vitriolic Léon Daudet, since last summer a fugitive from justice in Belgium (or elsewhere in Europe). It will be recalled that Maurras and Daudet's paper was condemned to the papal index more than a year ago for making the Catholic religion "an instrument of political propaganda." But this action apparently did not produce the desired effect. At all events, the new edict is more drastic. It denies to all recalcitrant adherents of *l'Action française* the Catholic communion, marriage rites, and religious burial. The Royalist organ vociferously retorted that the act was a bit of "ecclesiastic terrorism" directed against its patriotic refusal to fall into M. Briand's "pacifist trap."[22] More disinterested observers, however, were inclined to regard it as another link in the neo-Catholic policy of openly supporting all forces

[22] Cf. especially the *Manchester Guardian's* account of this incident in its weekly edition of April 6, 1928.

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in Europe that will tend to mitigate the effects of chauvinistic nationalism.

So far as an outside interpreter can judge, the French campaign of 1928 came to an end with less "official," or governmental, interference in the vote-getting process than is normally the case. The fact that the *union nationale* was appealing as a loose compact of divergent party groups for a popular vote of confidence in a national leader with the great prestige that Poincaré had acquired, through the success of his financial policy, militated against the old type of "official candidature." In fact, it was even charged by the conservative press that in certain districts "radical" prefects were working *against* "unionist" candidates.[23] One doubts, however, whether this happened in very many constituencies. For, as one prefect wrote to *Le Temps* in defense of the "political neutrality" of the office nowadays, "for twenty years the functions of the prefect have been veering more and more toward administration rather than toward politics. To-day the prefects communicate hardly at all with any central official but the minister of the interior. The other ministers correspond directly with their local representatives: chief engineers, school inspectors, finance officials, and magistrates. Thus the prefect has little effect upon the elections. But the 'governmental' candidate (where there is one) still likes to complain of the prefect's 'neutrality'; and the other candidates fear that he will not remain neutral."[24]

The outcome of the first day's polling, on April 22, confirmed the prevalent prediction that the "Poincarists" would win most of the seats where an absolute majority could be obtained. In consequence of the multiplicity of candidates, only 187 deputies were elected the first day, which meant that in 425, or more than two-thirds, of the electoral districts, *ballotiages* would be necessary.[25] Among these 187 victorious candidates, nearly 150 had campaigned as unqualified supporters of Poincaré. Only fifteen Socialists were elected, and although the Communists polled over a million votes (the largest popular vote in their history as a party), they failed to win a single seat. The largest bloc of deputies chosen on this *premier tour* were the 69

[23] Cf. *Le Temps*, April 7, 1928.

[24] As reported by *Le Temps*, May 10, 1928.

[25] There were more *ballottages* in 1928 than in any previous election held under the single-member plurality system: in 1906, 156; in 1910, 229; and in 1914, 252. In only five *départements* (Calvados, Meuse, Orne, Corse, and Constantine) were all the seats filled on the first vote.

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members of M. Louis Marin's *Fédération republicaine,* a pronouncedly conservative and nationalistic group.

In the interval between the first and second polling days, there were, as in all previous elections between 1889 and 1919, wholesale withdrawals of candidates, so that only 1,273 remained in the final voting. In all but a few of the 425 constituencies, the battle narrowed down to two or three candidates: (1) a "conservative" or "moderate" republican, representing the *union nationale;* (2) a radical-socialist or a republican-socialist or a "unified" socialist, representing an attempt to reconstitute the old *cartel des gauches* of 1924; and (3) usually a communist. Many new candidacies were, of course, declared—sixty-five in the department of the Seine alone; but nearly all the "independents" and *fantaisistes* dropped out of the contest. M. Léon Blum advised the Socialists to "desist" in favor of the candidates most likely to beat the National Union's representative, if no Socialist seemed to have an even chance to win.[26] The Communists, on their part, remained true to their orders from the Third International and refused to reciprocate. Otherwise, it was a week of political jockeying and compromising in the best French manner.

The second poll accentuated the gains of the center and right groups. The accompanying table shows the results of the two pollings

Party Groups	Old Chamber		Seats Won in 1928 Elections		
(In order from Right to Left)	*1924*	*Mar., 1928* (44 seats vacant)	*1st day*	*2nd day*	*Total*
Conservateurs-Royalistes	15	34*	7	8	15
Republicains U.R.D.	108	96	69	62	131
Démocrates (Catholiques)	14	13	8	9	17
Republicains de gauche	87	79	47	59	106
Republicains radicaux	49	32	14	41	55
Radicaux et radicaux socialistes	138	129	21	102	123
Republicains socialistes	42	38	6	41	47
Socialistes S.F.I.O.	104	92	15	86	101
Communistes B.O.P.	27	27	0	14	14
Socialistes communistes	0		0	2	2
Totals	584	540	187	424	611**

* This number includes those members not enrolled with any party group.
** The deputy from Martinique is missing from this total.

[26] Cf. *Le Temps,* April 26, 1928, and E. Julia, "Les Elections," *Revue Pol. et Parl.,* May 10, 1928.

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in comparison with party strength in the old Chamber as elected in 1924 and as it stood at the time of its adjournment on March 17:[27]

Except the ultra-Conservative-Royalist group, every party to the right of the Radical-Socialists increased its strength in the Chamber, whereas all groups to the left, except the Republican-Socialists of Briand and Painlevé, suffered slight losses. M. Herriot's party as a whole lost fifteen seats, but in view of its confused and divided condition how many of its bloc of 123 deputies should be classified as thoroughgoing supporters of the *union nationale* no one could predict at the date of writing these lines (June 23). Interpretations of the extent of Poincaré's success varied. *L'Europe nouvelle*, the distinguished liberal weekly of Paris, estimated that the Government could, for the time being at least, safely count upon 330 votes, with a probability that over 400 deputies would see "legal" stabilization through.[28] Another penetrating analysis of the popular vote argued that since only 221 deputies had won their election with the aid of, or by making promises to, either Socialist or Communist voters, the remaining 390 might be expected to sustain M. Poincaré (or any other "good" republican) on any phase of fiscal or foreign policy.[29]

The relation between the popular vote polled and the number of seats gained by the larger party groups shows what glaring inequalities of representation may result from the grotesque operation of an electoral law like the present French one. "The group *U. R. D.* of M. Marin, together with the Catholic Democrats, obtained 142 seats with 1,008,244 votes; while the Communists, with a slightly larger popular vote (1,060,334) returned only 14 deputies to the Chamber. The ensemble of the right bloc, which got in 1928 almost a million votes less than in 1924, won 31 more seats, whereas under a system of P. R.,

[27] French party labels and classifications are so confusing and so "fluid" that it is impossible for any set of statistics to satisfy all groups or to hold for more than a given moment of time. In the above table, based largely upon the bulletin issued by the ministry of the interior on April 30, the *Démocrates* are allowed only 17 seats, but they claim 23; likewise the Radical-Socialists insisted they had 131 instead of 123. Numerous deputies freely cross the frontiers between adjacent party groups during the term for which they are elected. This tendency has already shown itself, especially among the personnel of the shifting center groups, since the elections of 1928.

[28] In its leading editorial, May 5, 1928. Legal stabilization at 3.93 cents was actually voted on June 24 by the overwhelming majority of 450 to 22.

[29] Cf. E. Julia, "Les Elections," *Revue Pol. et Parl.*, May 10, 1928.

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it would have lost 71."[30] Between them, the two parties on the extreme left cast 2,777,546 votes, or about one-third of the total, and almost a half-million more than four years ago; but they won only a scant 18 per cent (115) of the total membership of the new Chamber.[31] Unless these figures lie, it would seem that the popular mandate of France in April was intended to be considerably more "liberal" than the electoral system allowed it to be. An only partially united and generally confused Left fell a victim to the very legislative act which it had forced through Parliament a year earlier against M. Poincaré's own better judgment.

However this may be, the real political complexion of the new Chamber cannot yet be determined. Perhaps, because of the looseness of party ties in the Palais-Bourbon, this will not be known until 1930, or even 1932.[32] (Witness the metamorphosis of the Chamber elected in 1924). A total of 307 members of the new Chamber sat in it for the first time when it convened on June 1—a turnover of 52 per cent, exceeded only once before (1919) in French parliamentary elections. Despite the fact that virtually all of its old leaders except M. Fallières (minister of labor) and M. Léon Blum (chief of the Socialist phalanx) were returned to it—despite, also, the remarkable popularity and authority of M. Poincaré—its prospective behavior was at the date of writing puzzling all the political wiseacres in the French capital.[33] Less than a week after the election returns were all in, Poincaré was reported as "maneuvering in the lobbies of the Chamber to get as many Conservatives as possible to transfer themselves from

[30] G. Lachapelle, one of the most eminent French exponents of P.R., came to these conclusions after analyzing the election results in *Vu* (Paris weekly), May 9, 1928. His allotment of seats to the *U.R.D.* and the Democrats differs by six from that given in the table presented above.

[31] In the eighteen districts bordering upon Paris, the discrepancies were especially glaring, as follows:

Party groups	*Popular vote*	%	*Number of seats*	%
Socialists	54,000	15	2	11
Communists	137,000	39	3	17
Others	163,000	46	13	72

In the entire Paris region, moreover, 47 out of 59 seats went to conservatives of one shade or another through the operation of the "plurality" system. This shows how Paris was "swept by the Right" as never before!

[32] Such is M. Julia's astute prediction. *Op. cit.*

[33] M. Loucheur was appointed to replace M. Fallières at the ministry of labor. Otherwise, the personnel of the cabinet was unchanged when, without following the customary usage of resigning, it faced the newly chosen chamber

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the Right to the Center."[34] "The new Chamber," announced the famous radical journal, *La Parole*, "is more to the left than the preceding one. Poincaré will do well to govern with us."[35] This, probably is the latter's own preference, for he has already shown some embarrassment over the "coupon" election which appeared at first to have given him a legislature more "ultra-Poincarist" than he now wishes to be himself. Yet it is significant that on June 5 the Chamber reelected as its president the popular Socialist, Ferdinand Bouisson, by a vote of 327 to 243, and chose by acclamation two weeks later another Socialist, M. Paul-Boncour, as chairman of its foreign affairs commission, and elected a Radical-Socialist, M. Louis Malvy, to head its finance commission. These are concrete indications that the new Chamber must have a kind of subconscious "leftist" complex. Once legal stabilization were voted through, it might easily so align itself as to bring into power, if and when M. Poincaré decides to retire, a left-center cabinet (or cabinets).[36]

Whatever the shuffling of the cards, it seems fairly clear that M. Briand's wholesome policy of Franco-Germano-European *rapprochement* will carry on.[37] As its natural corollary, evacuation of the Rhineland ought gradually to follow. The Alsace-Lorraine question will prove more difficult to handle, but the election of five "home rule" deputies to the Chamber in April has, at any rate, brought into the foreground of political discussion the seriousness of that administrative problem.[38] Economically and socially, the gigantic tasks of de-

on June 1. The occupational distribution of the latter's membership is characteristically wider than that of the American House of Representatives. It is:

Lawyers	132	Teachers	46	Merchants	26
Landowners	67	Physicians	43	Laborers	22
Industrialists	62	Farmers and vinegrowers	40	Civil servants	21
Publicists	52			Engineers	17
				Others	83

[34] Cf. *Manchester Guardian Weekly*, May 4, 1928.

[35] May 4, 1928.

[36] The man most frequently talked of as the likeliest successor to Poincaré is M. Tardieu, formerly a close collaborator with Clemenceau and now minister of public works in the National Union government.

[37] The victory of the Left in the May elections in Germany will doubtless strengthen Briand. But the Kellogg outlawry proposals played little part in the French campaign, though both Briand and Poincaré, the latter much chastened since the Ruhr days, sounded the note of "peace with security" in their few speeches.

[38] Though as yet there is no adequate understanding of the meaning of "home rule" in a centralized country like France.

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veloping the nation's natural resources, reorganizing its public administrative machinery, broadening out the educational system, and checking the ominous trend toward depopulation will put to difficult test the caliber of French political leadership during the coming four years.

WALTER R. SHARP.

University of Wisconsin.

The German Elections of 1928. The elections which were held throughout Germany on May 20, 1928, are of considerable interest and importance not only to Germany but also to the rest of the world. These elections, to be sure, did not have the dramatic interest which attended the Reichstag elections of December, 1924. But they deserve attention for a number of reasons: first, because they are the first elections to be held in the Reich under what may be called normal conditions;[1] second, because elections for five Landtags and several city councils were held at the same time;[2] and third, because the elections gave a further test, and supplied additional evidence of the operation, of the German system of proportional representation.

Despite the intensive work of the political parties, the people were not aroused to much enthusiasm during the campaign. The old Reichstag was dissolved before Easter, but not until the last week of the campaign could one detect any excitement. Never before had the electors been bombarded with so much printed matter, posters, and, last but not least, loud-speakers and films. All the modern methods of appealing to the voters were tried by the numerous political parties. There were lacking, however, the overpowering issues and the battle-cries which were so effective in 1924. Parades, demonstrations, meetings, and all the rest were carried through successfully on the whole,

[1] The two elections of 1924 were so near to the terrible days of the inflation, and so much concerned with the occupation of the Ruhr, separatism, and other matters incident to the war, that one could hardly expect normal results. Germany today is certainly not normal in the strict sense of the word. There are many enormous problems still to be solved, and there continue to be much suffering and distress. But, at any rate, outside dangers are remote, and the issues of the election were concerned with matters of internal importance such as are likely to be discussed for some years to come.

[2] The five states which held elections for the Landtags are Prussia, Bavaria, Württemburg, Anhalt, and Oldenburg. City elections were held in Breslau, Frankfurt-on-Main, and Wiesbaden, due to the recent *Eingemeindungen* which have taken place in these important cities.

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but they were quite dull and uninteresting. Only the two extreme parties, the National Socialists or Hitlerites on the right, and the Communists on the left, could appear enthusiastic. Nevertheless, the lack of what the Germans call a *"grosse Parole"* and the lack of excitement are not to be deplored; their absence probably indicates progress toward social and political consolidation.

The German appears to take his election duties quite seriously. He reads the enormous quantities of *"Broschüren"* and *"Flugblätter"* which are turned out by the parties. He studies the election posters which are put up on the *"Plakatsäulen"* along the streets of German cities. He faithfully attends political meetings and listens for several hours to speeches which are packed full of meat. Perhaps the fact that most of the meetings are held in halls where refreshments may be obtained helps him to digest the heavy diet which is handed to him. In any event, at election time he goes through all the motions of being a model citizen, even though his electoral system is quite impersonal and certainly not intended to be inspiring.

The list system of P. R. which is in force in Germany requires the parties to nominate lists of candidates in the various districts, unions of districts, and finally in the Reich.[3] For the 1928 election the parties nominated 5,484 candidates for the district lists and 540 candidates for the Reich lists, making a total of 6,024.[4] There was a total of 31 political parties and a total of 646 district lists and 31 Reich lists.[5]

Such a plethora of parties and candidates might give one the impression that German political life is chaotic. How can any nation with 31 parties decide anything in an election? Fortunately, however, two-thirds of these so-called parties did not cut any figure, and thus the distribution of votes was not such as to prevent a clear-cut de-

[3] The union of lists in adjoining districts is of course optional, but as a rule such *Verbindingungen* are made by the parties. A candidate may be placed on a district list and on a union list at the same time. Similarly, a candidate may be nominated for a district and also be placed on the Reich list. This was the case with Dr. Stresemann, who headed both the Reich list and the list in Ober-Bayern for the People's party.

[4] Inasmuch as many candidates are put on more than one list, the net total is somewhat smaller.

[5] This means that not every party nominated a list in each one of the 35 districts, while all had Reich lists. A party cannot have a Reich list, however, without having a district list. Number 27 of the Reich lists was declared void, leaving thirty parties in the field. In Prussia there were 18 lists, in Baden 17, and in Württemburg 16.

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cision at the polls. At the most, there were ten real political parties, and the battle was actually fought by seven of them.[6] The remaining *Splitterparteien* "also ran," but, with the exception of four of them, did not obtain any seats in the Reichstag. The 1,320,000 votes which were given to these latter parties were entirely wasted.[7] In the last Reichstag there was a movement in favor of legislation which would make it difficult, if not impossible, for these little groups to enter the lists. But unfortunately nothing was done. Perhaps the result of this election will give the necessary impetus to corrective legislation.[8] Some of the groups putting up lists could hardly have been serious, for they made no campaign efforts and sought to build up no organization.[9] They merely gave proof that the old German saying, "Where there are three Germans there will be three Vereins," is still true.

The German system of P. R., with the exception of the defect just pointed out, succeeds very well in mirroring the mind of the electorate. With so many political parties, a system of proportional representation is probably necessary, and there is little reason to believe that the present parties would give up the principle of P. R. There is dissatisfaction, however, with several features of the existing system. The first and greatest objection is that the districts are so large that it is next to impossible for the candidate to be acquainted with his district, and for the district to know its candidate. To introduce the personal element, the ballot has been changed so that under the name of the party list for which the elector votes are printed the names of the first four candidates on the party list. But this change has had little or no effect. Candidates still complain of the difficulty

[6] These ten parties, in the order of their strength, are: Social Democrat, German National Peoples', Center, Communist, Peoples', Democrat, Business, Bavarian Peoples', Christian National Peasant, and National Socialist.

[7] In December, 1924, the number of votes received by the *Splitterparteien* amounted to but 710,000, or the equivalent of 11 seats. This year the votes for these parties would have produced 22 seats if given to the larger parties.

[8] Many states had passed legislation requiring money deposits and thousands of signatures to nominate lists, but the Supreme Court, in appeals coming to it, declared such legislation unconstitutional.

[9] Here are the names of some of the *Splitterparteien*: Reichspartei für Handwerk, Handel und Gewerbe; Volksblock der Inflationsgeschädigten; Unpolitische Liste der Kriegsopfer, Arbeits invaliden, und Unterstützungsempfanger; Aufwertungs und Aufbaupartei; Partei für Recht und Mieterschutz. This latter party received 2,164 votes. See the *Deutsche Allgemeine Zeitung*, May 9, 1928, Number 213–214, for a list of all the parties entered in the election, together with an account of the meeting of the *Reichswahlausschuss*.

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of working their districts in a campaign, and of keeping in touch with the districts during the sessions of the Reichstag. The German system is much simpler than the Hare system and does not require the complicated method of counting which that system must have. But instead of voting for a candidate the German must vote for a party list, and thus the personal element in elections is lessened.

Furthermore, complaint is heard that there are no by-elections to fill vacancies in the Reichstag. Under the law, when a vacancy occurs the next person on the party list fills it. There seems to be a desire for more frequent tests of the state of public opinion in the country, and it is thought that by-elections afford this. Perhaps the value of by-elections is exaggerated; when they are not held there is a considerable saving of money.

Finally, some observers are beginning to find that the Reichstag is not getting the best possible candidates. The list system, however, has the advantage of practically assuring seats to the leaders of the parties, and also of enabling more women to be sent to the Reichstag. Strangely enough, the absolute power of the parties in the nomination of their lists is not causing criticism, although occasionally unpleasant deals are disclosed. The mechanical side of the system is handled very capably by the election officials, and there are no hitches either in the preparation for the election or in securing the exact results.

It has been remarked above that there were no outstanding issues in this election. The question of the restoration of the monarchy, for instance, was not even broached by the Nationalists. But the absence of large issues does not mean that there was a complete sterility of issues such as is usually the case in the United States. In fact, discussions raged about a number of important questions. The Nationalists, in their speeches and in their posters, advocated "more power for the Reich president." The Democrats pushed forward their proposals for the *Einheitsstaat*; while the Social Democrats emphasized "no more war." The electorate was made acquainted with the sins of omission and commission of the late government of the Right, and each voter should have been able to make up his mind how to vote.

After the tumult and the shouting, what were the results of this consultation of the electorate? Along what lines should German politics be expected to proceed during the next few years? The general result of the election was to move the balance of power in the Reichstag decidedly to the left. This was due, first, to the enormous losses of the Nationalists, and second, to the great gains made by the Social

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Democrats and the Communists. In his apparent desire to record a vote of lack of confidence in the recent cabinet, the voter quite obviously jumped over the middle parties and gave his vote to the Social Democrats. These middle parties also lost many thousands of votes of their own members to the Social Democrats, and their positions were further weakened.

The great victory of the Social Democrats cannot be minimized. They increased their strength by 1,200,000 votes. Compared to this gain, the increase of the Communists of about 500,000 votes seems small, although it is not unimportant. Socialist gains were made in thirty-three of the thirty-five electoral districts. The party increased the number of its seats in the Reichstag from 131 to 152, an increase of approximately sixteen per cent. This is indeed considerable for so large and important a party. Not only do the Social Democrats remain the largest single party in Germany, but the voters have now given them nearly one-third of all the seats in the Reichstag. The Socialist gains are due to a number of causes. The split in the party in Saxony has now been effectively healed; large bodies of workingmen in the Rhineland who formerly voted for the Center party this time voted for the Social Democrats; and the party profited from its well-oiled and perfectly working organization and from the general swing to the left which the figures so clearly indicate.

How to explain the correspondingly great loss of the Nationalists is not so easy. The Nationalist press is still quite up in the air, contenting itself with saying that "May 20 was a dark day for the German people." The Nationalists lost approximately 1,800,000 votes, and 30 seats in the Reichstag. This places them in about the same position as after the elections of 1920. Their losses were general and significant. As compared with the December elections of 1924, they lost 72,000 votes in Ober-Bayern, 78,000 in Nieder-Bayern, 70,000 in Potsdam I, 41,000 in Potsdam II, 67,000 in Berlin, 74,000 in Pommern, and 79,000 in East Prussia. Even allowing for the gains recorded by a new party of the right known as the Christian National Peasants' party—a party which assimilated the old Hanoverian party and is expected to vote with the Nationalists—the losses of the party which formerly was monarchist, and which had such an influential part in the recent government, are quite overwhelming.

In the "Ruck nach links" the middle parties also sustained considerable losses. The People's party, the Center party, and the Democratic party lost six, eight, and seven seats respectively. The high

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prestige of Herr Stresemann apparently saved the People's party from a greater loss.[10] Why the Democrats should have lost as much as the other two parties which were members of the recent Right coalition is not clear. The National Socialists, or Hitlerites, were likewise reduced in strength. They lost 100,000 votes in the whole country, and the only gains they recorded were in western Germany, either in or near the regions occupied by French and British troops.[11]

In addition to the Social Democrats, two parties were able to secure gains. The first of these was the Communist party. The "Reds" increased their popular vote by 500,000 and secured nine additional seats in the new Reichstag. In Berlin alone the gain was 130,000 votes for the Communists; but elsewhere in the Reich, as in Thuringia, Bavaria, Württemburg, and Mecklenburg, they lost considerably. The other party which gained was the Business party, which was able to secure six additional seats, bringing up its total to 23, just two less than the Democrats. This party has been able to take political advantage of the impoverished condition of the middle classes, and when one realizes how serious this condition is, one wonders why the party is not stronger. As long as Professor Bredt and his colleagues are in opposition, and thus not forced to fulfill their promises, they are likely to maintain, or even to increase, their strength.

The great Social Democratic victory in the Reichstag elections also extended to the elections for the five Landtags elected at the same time. In Prussia the present Weimar coalition of Social Democrats, Democrats, and Centrists will continue in power with slightly increased strength. The Prussian prime minister, Otto Braun of the Social Democratic party, is assured of his position. In Bavaria the present control of the Bavarian People's party is threatened through the large Socialist gains. In Württemburg, where the Nationalist prime minister Bazille has governed for several years, a surprising upset occurred, leaving his coalition in a minority. The next cabinet will be much more to the left. In Oldenburg the Right government parties were defeated in the election and will be succeeded by a Weimar coalition. The same story can be told of the small state of Anhalt. Even in the city elections in Frankfurt, Wiesbaden, and Breslau, the Social Democrats registered large gains and the Nationalists corresponding losses.

[10] Dr. Stresemann was not successful in winning a seat for his party in Bavaria, where he was entered as the *Spitzenkandidat*, but he more than doubled the vote of his party there.

[11] Their two greatest gains were in the Palatinate and in the Coblenz area.

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It is therefore very clear that the German people wanted a government of the Left, and have repudiated the recent Right coalition. If the elections mean anything at all, they mean this. Germany, however, has not yet been able to operate her parliamentary system perfectly. The many parties have necessitated much compromising in the formation of cabinets, and the strong arm of the President has been required upon occasion to settle the bickerings attendant upon cabinet crises. Even now, as the present article is written (May 25), there is considerable uncertainty as to how a new cabinet is going to be formed.[12] By their smashing victory the Social Democrats are clearly entitled to the dominating position in a new cabinet of the Left. But in order to form a "grand coalition," composed of all the parties from the Social Democrats to the People's party, it is necessary to arrange a compromise between the Social Democrats and the People's party—in other words, to effect a compromise between socialism and big business, a rather difficult task to say the least. Thus although the People's party lost considerable strength in the election, it will have much to say as to whether the newly elected Reichstag will see numerous ministerial crises, or whether it will be enabled to get to work on the many problems crying for solution. Parliamentary government with numerous parties, even when the people speak clearly and have their votes accurately reflected through a good system of P.R., is indeed problematical.

The uncertainty for the future is partly due to the position taken by the Communist party. This party, with 54 seats in the new Reichstag, is nothing but a millstone around the neck of any government, be it left, right, or center. The Communists are obstructionists pure and simple and cannot be reckoned in any scheme for building a new cabinet. This means that although the new Reichstag is decidedly left, the next cabinets cannot be nearly as left as the Reichstag.

The Conservatives are already hoping for difficulties and another election. But such hopes are not well grounded. Following the practice

[12] The Marx ministry resigned on June 12, and President Hindenburg invited Herman Mueller to form a cabinet. He encountered unusual difficulty in securing the necessary coöperation of the Center and People's party, but succeeded June 28 in forming a ministry which consisted of four Socialists, two members of the People's party, one Centrist, two Democrats, one member of the Bavarian People's party, and one person who is a member of no party. On July 4, the Reichstag approved the program of the new government by a vote of 261 to 134, with twenty-eight deputies not voting. *Editor.*

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now established, the old cabinet will remain in office until the day before the new Reichstag assembles. Before that time, President Hindenburg will consult the leader of the strongest party, namely, the Social Democrats, concerning the formation of a new cabinet. After the meetings of the various party factions following Whitsuntide, it will become clear whether a cabinet of the "grand coalition" can be formed. If, as now appears likely, such a coalition is formed, it is very probable that a Social Democrat will again become chancellor of the Reich, for the first time since 1920. Such an outcome would give effect to the clearly spoken word of the people in the great consultation of 1928.[13]

JAMES K. POLLOCK, JR.

University of Michigan.

[13] In this election 31,145,308 votes were cast as compared to 30,703,591 in December, 1924. The number of qualified voters, however, rose from 38,987,385 to 41,295,102, causing the percentage to drop from 78.8 to 75.4. The district of Baden had the poorest record, with a percentage of 61.7, while the Magdeburg district had the highest record, with a percentage of 84.4. The total number of invalid ballots amounted to 420,830. Experience has shown that a certain number of these ballots are eventually declared valid by the *Wahlprüfungsgericht*. Since the Social Democrats need but 3,836 additional votes to secure an additional seat, the action of this election court will be watched with interest. The new Reichstag will have 129 members who have not previously served in Parliament. It will also have 31 women members, of whom 19 belong to the Social Democratic party. Since the size of the Reichstag depends upon the number of votes cast, the new body will have 490 members as compared to 493 members in the old body. This is true, despite the increase in the number of votes over 1924, because of the wastage of votes on the *Splitterparteien*.

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NOTES ON INTERNATIONAL AFFAIRS

EDITED BY BRUCE WILLIAMS
University of Virginia

What is the League of Nations? On January 10, 1928, the League of Nations celebrated its eighth birthday. No longer a mere ideal, it has become, during these eight years, an effective agency for world peace. It is therefore now possible to discuss the nature of this unique organization not so much through interpretations of the Covenant as by an examination of the institution in actual existence.

Many learned treatises have been written on the nature of the League. Certain writers affirm that the League is a rudimentary superstate. But this definition seems hardly appropriate when we consider that the League is not a sovereign power. It has no army, no navy, no territory. It can levy no taxes, nor enforce their collection. In fact, the League is not a state at all, much less a superstate. Again, others would have us believe that the League is an international corporation, if there can be such a thing. While there are certain points of similarity between the League and that "artificial thing created by law" known as a corporation, there are other respects in which dissimilarity is no less pronounced. No sovereign power has given the League its charter, nor can any single government amend that instrument. Not having been created by legislation, it is not amenable to any legislative body. In fact, the League is *sui generis*; it cannot be placed under any heading such as superstate, corporation, federation, or other hitherto recognized classification. Though exhibiting some of the attributes of each of these conceptions, it essentially differs from any one of them.

It is the purpose of the writer of this article to lay before the readers of the *Review* certain instances where the special and peculiar nature of the League manifests itself. These developments will indicate what lies in the minds of those under whose guidance the evolution of the League is proceeding. They will also perhaps enable us to get a clearer idea of what the institution really is.

Finances. The Covenant says very little regarding the financial administration of the League. Hence the Assembly and the Council have been called upon to develop a practical system of financial administration. At every assembly a detailed budget is presented by the secretary-general. This is discussed, amended, and

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finally passed. It authorizes the expenditure of a specified sum during the ensuing calendar year and the raising of a corresponding amount from the member states. Had the monies thus obtained been employed solely for the current expenses of the organization, and if no tangible assets had remained after each year's obligations had been met, the problem of League ownership of property would not have arisen. But as a result of the financial operations of the past eight years the League today possesses (a) a working capital fund, (b) a large cash surplus, and (c) real property in the form of buildings, land, etc. An examination of the manner in which these assets are held may prove valuable to our investigation.

Working Capital Fund. In the earlier years of the League's existence it was thought advisable to create a working capital fund in order to obviate the necessity of borrowing from the banks in anticipation of the payment of contributions. But whereas the Covenant authorizes the raising of funds "for expenses," it hardly permits the accumulation of monies to be kept on deposit. Hence the theory was advanced and accepted that working capital constitutes a *loan* on the part of the several states to the collectivity of states, and it was further declared that any state, upon withdrawal from the League, might claim reimbursement of its proportionate share. In conformity with this understanding, the treasurer of the League is required to present an annual statement showing exactly what part of the working capital stands to the credit of each state. Common ownership is non-existent, the working capital fund being merely a combination of carefully identified loaned amounts.

Surplus Funds. A similar situation arose in respect to surplus funds. Accurate budgeting, especially for an organization so likely to have emergency expenses, is difficult to secure. In the earlier estimates, the officials may have erred somewhat on the safe side and demanded revenue in excess of actual needs. At all events, the fact remains that from 1922 to 1925 considerable surpluses were shown at the end of each year's operations. Now the Financial Regulations provide that any such surplus shall be applied in reduction of the cost of the second next following period. Thus the surplus, if any, of 1928 will be used in the reduction of the amounts payable in 1930.

But the member states decided to forego their rights to these rebates and to place their respective shares in a League building fund. In due course the building fund, to which certain windfalls were added, reached a considerable sum, whereupon the 1926 Assembly resolved

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"that there should be recorded the share in this total that belongs to each member which has contributed to it, in order that the proper refund may ultimately be made to each member state."

Subsequent decisions have carried the matter farther. The entire capital holdings of the League—buildings, lands, building fund, etc., estimated as worth approximately $5,000,000 today—are held to be the property, not of a corporation, but of a certain number of individual states whose percentage shares have been definitely determined by a final schedule voted by the Assembly of 1926. Thus we find that the share of Great Britain in the building fund is 8.473606 per cent of whatever may be regarded as forming part of or resulting from the use of that fund, while Honduras and Nicaragua, still members of the League but never having paid any contribution, have no part in the ownership of the League's capital assets. Were the League by mutual consent to disband, there would be no quarrel over the assets, for the share of each state in the capital holdings is definitely known and the right of each state thereto clearly admitted.

Purchase of Properties. In the summer of 1920 the secretary-general opened negotiations with "La Societé de l'Industrie des Hôtels" for the purchase of a building at Geneva known as the Hôtel Nationale. To arrive at agreement as to price and terms was not difficult, but considerable discussion arose regarding the formula to be employed in describing the purchaser. The clause which appears in the preamble to the deed of sale reads in part thus: "Sir Eric Drummond, Secretary-General of the League of Nations, living in London . . . . or his representatives M. van Hamel and Sir Herbert Ames, acting in the name of the League of Nations whose seat is at Geneva, and which was established by the Peace Treaty of Versailles on June 28, 1919, being specially delegated and authorized for the purpose by the Council of the League of Nations at its meeting held in Paris on the 20 Sept. 1920, whereof extract shall remain appended to this deed, OF THE FIRST PART, etc."

Much the same designation was subsequently used in 1926 when the Barteloni and other properties were acquired as a site for the new Assembly Hall. In these documents the description reads: "sold . . . . to the . . . . League of Nations constituted by the Peace Treaty of Versailles of June 28, 1919." Note the formula. No attempt is made to declare what the League is. It is sufficient, after giving its name, to indicate its domicile, its origin, and the instrument of its

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creation. Its special character, different from any other institution in existence, is evidenced by the formula employed.

Relationship with the Swiss Government. With its domicile at Geneva, the headquarters of the League, at least according to the map, are in Switzerland. In the autumn of 1926, after prolonged negotiations, an agreement was arrived at between the Swiss Federal Council and the League authorities as to the régime of diplomatic immunity of the officials of the League. The Swiss government recognizes that the League of Nations possesses "international personality and legal capacity" and cannot be sued before the Swiss courts without its express consent. The premises it occupies are inviolable; no agent of the public authority can enter them without permission. The secretary-general is entitled to use couriers for his official correspondence. Customs exemption is granted in respect of all objects for exclusive League use. No taxation can be imposed on League properties, nor on its bank assets or its securities. Officials of the upper grades, who are extraterritorial, enjoy immunity from civil and criminal jurisdiction in Switzerland, and also fiscal immunity.

Now it is to be noted that in all these stipulations the Swiss federal government regards the League in almost indentically the same light as it looks upon an embassy. The privileges and immunities accorded the League, its property, and its staff, are those given the minister representing a sovereign state and located in Switzerland. Is the institution at Geneva, then, anything more than a combination of embassies, the aggregation enjoying the same privileges and immunities as would be granted to a recognized embassy?

The Administrative Tribunal. After the secretariat of the League and the staff of the International Labor Office had been recruited, it was deemed advisable to define the rights and duties of the officials by means of a series of staff regulations, and there was given to each employee a written contract binding upon both parties under the regulations above mentioned. As it was inevitable that disputes should arise as between the administrative heads and members of their respective staffs, the Assembly, in December, 1920, established a right of appeal to the Council. But the exercise of this right proved very irksome, since members of the Council felt that their time at Geneva might be better employed than in hearing cases of this nature.

The Eighth Assembly, therefore, adopted a statute authorizing the establishment of a League of Nations administrative tribunal, consisting of three independent outsiders, one of whom must be a judge;

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and, the Council having appointed the members, the tribunal commenced to function in January, 1928. In the Assembly document the tribunal is thus described: "The function of the proposed tribunal will be to pronounce finally on any allegation that the administration has refused to give an official treatment to which he was legally entitled, or has treated him in a manner which constitutes a violation of his legal rights, under his appointment, or of the regulations applicable to his case, or, finally, has taken in an irregular and improper manner a decision which was within its competence."[1]

Here again is evidence of the unique character of the League. This is probably the first time in history that an *institution* is extraterritorial and requires to create its own legal tribunal to interpret its agreements with its staff.

What, Then, Is the League? Space prevents pushing this inquiry farther. But have we not already enough evidence to show that in the minds of those who are active in League development the institution is not regarded as a superstate, a corporation, or a federation? Let us attempt to describe the organism as we know it today.

Fifty sovereign states have become associated for their own good and for the benefit of the world at large. Each state has signed a solemn treaty with each of the other forty-nine states (a) to limit its freedom of action in certain directions, especially in its liberty to resort to war, and (b) to coöperate in the settlement of international problems in such fields as finance, economics, transit, health, labor, and other matters susceptible of international treatment. As a necessity to the effective carrying out of these common purposes, these fifty nations have created certain machinery which they have agreed to use in the common interest. The persons employed in operating the machinery are accorded the same privileges that would be enjoyed by the representative nationals of any single state doing similar work and residing within the limits of another country. The physical instruments necessary to the functioning of this enterprise—lands, buildings, monies in bank, etc.—are the property of each of the fifty states, in the exact proportion in which their several contributions have made its acquisition possible. Any state withdrawing from the group may take out whatever it has paid in, minus such portion as has been actually used in meeting current expenses.

Or, to close with a briefer definition, the League of Nations, as we know it today, is a voluntary association of self-governing states,

[1] A 72, 1927, V, p. 2.

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bound together by treaty to forego certain rights and employ certain methods for the preservation of the peace of the world and for coöperation in the mutual interest.

HERBERT BROWN AMES

Cambridge, Mass.

Turkish-American Treaty Relations. In 1799 President Adams appointed William Smith, of South Carolina, minister to the Sublime Porte[1] "with full authority to negotiate a treaty of amity and commerce with Turkey."[2] The mission was abandoned, however, and no farther steps were taken to negotiate a treaty with Turkey until 1820. In that year the Bradish-Bainbridge mission proved fruitless, as did the English-Rogers mission, which extended from 1823 to 1826, and the Crane-Offly mission in 1828. Finally, in 1829, President Jackson commissioned Charles Rhind, David Offly (subsequently the first United States consul to Turkey), and Commodore James Biddle to negotiate a treaty with the Sublime Porte. The result of their mission was the treaty of commerce and navigation of 1830, the first treaty concluded by the United States with an Oriental state. In 1831 an American legation was opened in Constantinople with David Porter as chargé d'affaires.[3]

Although "a friendly treaty of commerce and navigation," the treaty of 1830 was provocative of more dispute than harmony in the subsequent relations of the two governments. The most important portion was Article IV, under which the United States government claimed extraterritorial rights for its citizens. The Sublime Porte, however, denied the interpretation placed on the article by the United States.[4] Other provisions of the treaty called for most-favored-nation treatment and freedom for American vessels and merchants in Turkey. A secret clause providing that vessels desired by Turkey should be purchased and built in the United States was rejected.[5]

In reality, the commercial relations of the two countries were based not only on the treaty of 1830, "but also on the English convention

[1] In diplomatic parlance the Sublime Porte meant the Imperial Ottoman Government.

[2] United States Department of Commerce, Trade Promotion Series No. 28. *Turkey: A Commercial and Industrial Handbook*, p. 228 (Washington, 1926).

[3] *Ibid.* For the text of the treaty see Malloy, *Treaties and Conventions of the United States*, Vol. I, pp. 1318–1321.

[4] *Foreign Relations, 1885*, pp. 890-898; 1887, pp. 1098–1107.

[5] *Turkey: A Commercial and Industrial Handbook*, p. 229.

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of 1838, the benefits of which, by an agreement with the Sublime Porte, were extended to us in the following year".[6] That treaty provided most-favored-nation treatment for citizens and ships, declared that no permits should be necessary for trade with subjects of the Sultan, provided that the same import duties should be charged all nations, and finally stated that there would be no objection to other nations using the treaty as a basis of trade.[7]

The relations of Turkish and American traders rested upon the treaty of 1830 and the Turco-British treaty until 1862, when the United States concluded a second treaty of commerce and navigation with the Ottoman Empire based upon the old Turco-British treaty. The more important articles contained the following provisions: (1) the Turkish government accorded most-favored-nation treatment to American citizens and ships; (2) permits to trade were not to be required of Americans; (3) the Turkish government agreed to charge equal import duties in respect to all nations; (4) the eight per cent ad valorem export duty then in force was to be reduced one per cent annually to a permanent level of one per cent; (5) an import duty of eight per cent ad valorem was to be levied upon all goods, with a provision for refund if re-exported within six months; (6) a provision for the single payment of duties was inserted to avoid repetition of experiences with corrupt Turkish customs officers; (7) Americans were guaranteed equality of treatment with regard to warehousing, bounties, drawbacks, and port facilities; (8) goods shipped in either American or Ottoman vessels were to have equality of treatment; (9) there was to be no transit charge for passage through the Dardanelles or the Bosphorus; (10) the old land transit duty of three per cent was reduced to one per cent; (11) the importation of arms and ammunition into Turkey was prohibited; and (12) a tariff commission was appointed to draw up a schedule of values upon which to base ad valorem duties.[8]

The relations of the two governments rested upon the treaties of 1830 and 1862 until 1917, when diplomatic relations were severed. Several unsuccessful attempts had been made by Turkey to abrogate or revise the treaty of 1862. The main motive was Turkey's desire to raise her import duties from eight per cent ad valorem to twenty per

[6] *Foreign Relations, 1907*, Part 2, p. 1051.

[7] *Hertslet, Treaties and Conventions between Great Britain and Foreign Powers*, vol. V, pp. 506–510.

[8] Malloy, *op. cit.*, pp. 1321–1328.

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cent. In 1875 Aristarchi Bey, Ottoman minister to the United States, informed the State Department that owing to the demoralized condition of Turkish finances the Ottoman government desired to free itself from the limitations placed upon import duties by that treaty and, in accordance with the terms of Article 22, had given notice on January 15, 1874, of its desire to terminate the treaty.[9] Secretary Fish replied that the United States government was in sympathy with the Turkish plan to recoup its finances, but called attention to the most-favored-nation clause, to which the United States expected strict adherence.[10] The Turks then dropped the question for a time, but they renewed their efforts in 1883, when notice again was given of their desire to terminate the treaty. The basis of a proposed new treaty was presented which would have increased Turkish import duties on American goods to twenty per cent ad valorem. Upon investigation, it was learned, however, that existing treaties with other countries could not be revised for some time, which meant that duties upon their goods would remain at eight per cent. The United States accordingly refused to accept notice of termination of the treaty, though avowing its readiness to revise the treaty if not placed at a disadvantage with other nations.[11]

The question of revision of the treaty was thereafter raised several times, and in 1905 the Turks set about securing revision of import duties upwards without American consent. The bulk of Turkish trade was then with Great Britain, France, and Germany, and arrangements were made quietly with those nations to scale up the import duties. They agreed only to a three per cent increase, however, instead of the proposed twelve per cent; and their consent to the increase was predicated upon Turkish compliance with certain demands. Germany insisted that a certain portion of the additional revenue be set aside to help pay the kilometric guarantee of the Bagdad railroad; the French insisted that disputes concerning the Syrian railway and the quays at Constantinople be settled in their favor; while the British demanded a concession concerning the gendarmerie in Macedonia and the settlement of certain mining claims.[12] Shortly before the agree-

[9] *Foreign Relations, 1876*, p. 591.

[10] *Ibid.*

[11] *Foreign Relations, 1883*, p. 836; 1884, p. 566.

[12] *Foreign Relations, 1905*, p. 876. *Accounts and Papers, 1906*, vol. CXXXVII, Cd. 2816, pp. 57, 69, 70, 144, 145; *ibid.*, Cd. 2759, pp. 19, 33, 58, 68, 70, 74, 75, 80, 105.

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ment was reached, the American ambassador, Leishman, learned of the negotiations and vigorously protested.[13] He took the position that since other powers were taking advantage of the situation to settle certain disputes the United States should do likewise. The State Department accordingly authorized him to demand fair treatment for American missionaries, schools, and citizens, in accordance with treaty guarantees, as prerequisites to consent to treaty revision.[14] After some delay, the various demands were met, American consent was given, and Turkish import duties were raised from eight per cent to eleven per cent ad valorem.[15]

As has been indicated, the United States government held that Article IV of the treaty of 1830 granted extraterritorial rights to its citizens resident in Turkey. The Turks, however, denied that the treaty granted such privileges to the extent claimed, basing their denial upon an erroneous translation of the treaty. According to the State Department records, there was evidence of bad faith on the part of the Ottoman government in transmitting to the United States government a translation of the treaty in Turkish which purported to be authentic but which, it later developed, differed seriously from the original treaty.[16] The United States based its claim to capitulatory rights, not only upon the treaty of 1830, but also upon the treaties of Paris and Berlin and upon decrees of the Sultan.[17] State Department records contain many accounts of Turkish violation of capitulatory rights, and the question was never satisfactorily settled, with the result that American citizens resident in Turkey were never secure in their personal and property rights.[18]

This situation continued until 1914, when the Turks definitely abrogated the capitulations. They had always been anxious to rid themselves of extraterritorial rights, and when they entered the World War on the side of the Central Powers the Young Turks, encouraged by the Germans, determined to throw them off. Accordingly the Turkish cabinet notified the world on September 9, 1914, that the

[13] *Foreign Relations, 1906*, Pt. II, p. 1413; *ibid.*, 1907, Pt. II, p. 1051.
[14] *Foreign Relations, 1907*, Pt. II, p. 1051.
[15] *Ibid.*, pp. 1052–1053.
[16] *Foreign Relations, 1885*, pp. 890–898.
[17] *Ibid., 1887*, pp. 1098–1107.
[18] An outstanding case was that of the arrest and imprisonment for almost two years of Dr. Maurice Pflaum by Turkish officials in 1883. Cf. *Foreign Relations, 1883*, pp. 809–892; *1884*, pp. 532–574; *1885*, pp. 809–879.

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capitulations would be abrogated on the following October 1.[19] As the date approached, foreigners in the country were naturally uneasy. Enver Pasha, minister of war, assured the American ambassador, Mr. Morgenthau, that the Turkish government had no hostile intention toward Americans. Mr. Morgenthau asked him to demonstrate his good faith by making a visit to Robert College on October 1, which would be interpreted by all the Turks as an act of patronage by one of their most powerful leaders. The visit was made in full military pomp, with the result that American citizens and schools were unmolested during the war period.[20]

At the Lausanne conferences the representatives of the republic of Turkey were unyielding on the question of capitulations. As a result, the treaties negotiated with the European powers, as well as that subsequently negotiated with the United States, were devoid of extraterritorial rights. In their stead, and as a compromise, the Turks agreed to a system of foreign legal advisers who should have authority to hear complaints arising from arrest or imprisonment of Americans and other foreigners.[21] Although this provision caused considerable opposition to the treaty, Colonel H. Woods, British commercial secretary at Constantinople, later expressed the official opinion that the abolition of the capitulations "has not resulted in dislocation of the normal flow of trade to any very great extent."[22]

Questions regarding the legality of American citizenship acquired by naturalization have been a constant source of friction between the governments of Turkey and the United States, with no definite settlement by treaty even to this date. The Turco-American treaty recently rejected by the Senate did not attempt to settle the long-standing problem, but simply postponed the question, as the British postponed the Mosul question, with the proviso that the United States reserves all rights of American citizens in Turkey, whether native born or naturalized. The basis of the controversy lies in the fact that the United States recognizes the right of any person to

[19] Great Britain, Miscellaneous No. 13 (1914), Cd. 7628, *Correspondence Respecting Events Leading to the Rupture of Relations with Turkey.*

[20] Ambassador Morgenthau's *Story*, p. 115.

[21] See Article 1 of the treaty of amity and commerce signed at Lausanne, August 6, 1913; also "Declaration of Turkish Delegation" dated July 24, 1923, in *The Treaty with Turkey*, issued by the General Committee of American Institutions and Associations in Favor of Ratification of the Treaty with Turkey.

[22] Great Britain, Department of Overseas Trade, *Report on the Economic and Commercial Conditions in Turkey*, April, 1925, p. 28.

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change his nationality by domiciling himself in the country of his choice and complying with that country's naturalization requirements, while Turkey has steadfastly refused to recognize such a right on the part of its citizens. In short, Turkish nationality rests upon the doctrine of *jus sanguinis*, while American nationality rests upon the doctrine of *jus soli*.

The Turkish government contended that its subjects, notably Armenians, took up residence in the United States merely long enough to secure American citizenship, with no intention of remaining in this country, and thereupon returned to Turkey, where they claimed all the rights and privileges of American citizenship, including extraterritorial rights, for themselves and their children. President Cleveland openly admitted the partial validity of this contention.[23] With a view to preventing the practice, the Turks passed the law of 1869 which provided that only Turkish subjects who had obtained imperial consent to change their nationality could lawfully assume foreign citizenship.[24] All others who secured foreign citizenship were not recognized, and when they returned to Turkey for a visit or to live were liable to arrest and imprisonment. The United States, on the other hand, steadfastly adhered to its doctrine of citizenship; and the two nations came to a deadlock, with the unfortunate result that in many cases bona fide American citizens have incurred heavy personal sacrifices and financial losses through the failure of the two governments to adjudicate their differences.

Several attempts were made to negotiate a treaty of naturalization, but they always failed. In 1874 the question came nearest to being settled when a draft treaty was drawn up but was rejected by the United States Senate.[25] As indicated, the treaty of 1923 did not take up the perplexing and important problem, and apparently the two governments are no nearer a solution of the question today than they were in 1830.

Under the earlier laws of Turkey no foreigner could own real estate in his own name. If an American citizen desired to acquire property in Turkey he had to buy it in the name of an Ottoman subject and have the deed made out in the subject's name. The confusion to which such a system would and did lead is apparent. Under the treaty

[23] *Foreign Relations, 1893*, p. x.

[24] *Legislation Ottomane*, vol. I, p. 8, art. 5 (in *Foreign Relations, 1868–1869*, p. 2, p. 113).

[25] *Foreign Relations, 1887*, pp. 1109–1113; *ibid., 1886*, p. xi, and *1889*, p. 719.

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of Paris of 1856 the Sultan agreed to institute certain internal reforms, among which was included the question of foreigners holding real property.[26] It was not until 1867, however, after strong diplomatic pressure had been applied that the Turkish government passed a law granting foreigners the right to hold real property.[27] The step was an important one, but far from satisfactory, for the law was so worded that it practically made Turkish subjects of such foreigners as did acquire real property. It also provided that the various foreign governments must accede to the law before their nationals could avail themselves of its provisions. The law was not acted upon in the United States for several years, and the situation of our citizens in Turkey desiring to hold property became so acute that something had to be done. In 1871 Minister Brown advised the State Department to accept the protocol covering the Turkish law, saying that Turkey would not recognize the right of foreigners to hold property in a general treaty. He also pointed out that Turkey did not expect a reciprocal law, that the application of the proposed law would not be severe, and that, on the whole, it was about the best that could be expected.[28] This last argument was quite generally advanced in favor of ratification of the Turco-American treaty of 1923. After considering the question three years, a protocol was issued by President Grant on October 29, 1874, accepting for the citizens of the United States the law of the Ottoman Empire conceding the right of foreigners to possess real property in Turkey.[29]

Acceptance of the protocol did not, however, eliminate the troubles experienced by Americans in acquiring and holding or transferring property. By the levy of a tax upon property held by foreigners,[30] by refusal of the right of certain foreigners to transfer property,[31] and by restriction of the uses to which property could be put,[32] the rights of foreigners were seriously curtailed. In 1905 Ambassador Leishman summarized the whole question of the right of foreigners to hold real property as follows. (1) Unless specially authorized by imperial iradé, corporations cannot acquire or hold real property in Turkey. Directors often purchase the property in their own name

[26] *Foreign relations, 1863*, pt. 2, p. 1183.
[27] *Ibid., 1867*, pt. 2, p. 5.
[28] *Ibid., 1872*, p. 656.
[29] *Ibid., 1874*, pp. xxiii–xxv.
[30] *Ibid., 1881*, p. 1176.
[31] *Ibid., 1883*, p. 810.
[32] *Ibid., 1891*, p. 750.

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giving deeds of trust to the corporation, declaring that they hold the property for it. (2) American citizens, native born or naturalized before 1869, may acquire and hold real property in Turkey. (3) Citizens of Ottoman origin who have been naturalized without imperial consent since 1869, or their children, are not authorized, as foreign citizens, to hold property in Turkey, as the government does not recognize their naturalization. By admitting their Ottoman citizenship, they may acquire property. (4) In matters relative to the tenure of real property in Turkey foreign citizens are assimilated to Ottoman subjects and the Ottoman law applied to all. In these matters foreigners cannot take advantage of the capitulations.[33]

An extradition treaty, containing the customary provisions, was concluded between Turkey and the United States in 1874 and proclaimed on May 26, 1875.[34] Upon its first test, however, the Sublime Porte refused to extradite a Turk who had fled from New Jersey, claiming that the treaties of naturalization and extradition were so tied up together that when the former failed of ratification the latter also was nullified.[35]

Thus, up to 1914 the relations of Turkey and the United States were based upon (1) the treaty of commerce and navigation of 1830, (2) the treaty of commerce and navigation of 1862, (3) a treaty of extradition signed in 1874, and (4) a protocol of 1874 accepting the Turkish law of 1867 which granted foreigners the right to hold real estate.

In 1914 the capitulations were abrogated by Turkey, then under the control of the Committee of Union and Progress. In 1917 the Turkish government severed diplomatic relations with the United States and definitely announced that all treaty relations were annulled.[36] The United States government protested the power of Turkey to annul the treaties and then withdrew its representatives, leaving American interests in the hands of the representatives of the government of Sweden.

A year and a half after the signing of the armistice, the Allies imposed the treaty of Sèvres upon Turkey, restoring, as nearly as pos-

[33] *Foreign Relations, 1905*, p. 880 et seq.

[34] Malloy, op. cit., pp. 1341–1344.

[35] *Foreign Relations, 1909*, pp. 596–603.

[36] United States Department of State, *Declarations of War and Severance of Diplomatic Relations* (Washington, 1919), p. 96.

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sible, the *status quo ante bellum*.[37] In the meantime, the Turkish Nationalist movement had gained ground, and the treaty of Sèvres was rejected by the Turks. The Greeks, being the only ones willing to attempt to enforce the treaty by military means, were repulsed, and the armistice of Mudros was signed. The next step was the first Lausanne Conference, which broke down, and was followed by the second Lausanne Conference, which resulted in the Turco-Allied treaty of 1923, the terms of which were much more favorable to Turkey.[38]

The United States government sent unofficial representatives to the Lausanne conferences, but was not a party to the Turco-Allied treaty, since it had never declared war on Turkey. After the Allied treaty was concluded, the Turkish and American representatives negotiated the Turco-American treaty of Lausanne, which was signed on August 6, 1923. A brief comparison of that treaty with previous conventions reveals the following points. (1) The capitulations were definitely abrogated. In their place Turkey agreed to a system of legal advisers for the protection of American interests, but with Turkish sovereignty definitely established. (2) The right to own movable property was granted freely to Americans, reciprocally. The right to own immovable property was granted, subject to reciprocity and the local laws governing such rights of foreigners. Corporations were subjected to the same provisions. Americans were to be free to engage "in every kind of profession, industry, or commerce not forbidden by local laws to all foreigners." The full meaning of this provision is dependent upon the nature of treaties to be concluded between Turkey and the Allied Powers, separately.[39] (3) Most-favored-nation treatment was accorded to United States nationals in respect to freedom of commerce and navigation, import and export duties, consumption and excise taxes, transit duties, drawbacks, and protection of patent and trademark rights.[40] (4) The failure to mention the long-standing question of naturalization was a fundamental weakness of the treaty. Articles 3, 5, 6, 7, 8, and 29 dealt specifically with the rights of nationals of both countries, but

[37] Cf. *Accounts and Papers, 1920*, Vol. LI, *Treaty of Sèvres*, Cmd. 964, pp. 1–99.

[38] "The Lausanne Conference on Near Eastern Affairs, Records of Proceedings," *Accounts and Papers*, vol. XXVI, Turkey, No. 1 (1923). Cmd. 1814.

[39] Cf. Art. 3 of the treaty.

[40] Cf. Arts. 11–16 of the treaty.

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the question would at once arise as to whether a given individual was a Turkish or an American national. Heretofore a Turkish subject legally naturalized in the United States was considered an American citizen by the United States government, but was also considered a Turkish subject by the Turkish government, subject to Turkish law. If such an individual were to return to Turkey following ratification of the proposed treaty, it is not clear whether he would be considered a Turkish citizen subject to Turkish law or whether he would be considered an American citizen subject to the provisions of the treaty.

On the one hand, a storm of protest greeted the Turco-American treaty, while on the other hand important interests favored it. Much literature was circulated in the course of attempts to bring about rejection or acceptance. In general, the religious element and the Armenian sympathizers in the United States were opposed to ratification, while business interests here and in Turkey, as well as religious interests in Turkey, were in favor of the treaty. Ratification of the treaty became to some extent a political issue in 1924, when the Democratic party inserted a plank in its platform calling for rejection.

Through the most-favored-nation clause, the United States was to receive the benefit of the tariff provisions of the Lausanne treaties. The Turkish government had instituted a maximum and minimum tariff system under which the maximum rates, which were as much as sixty per cent higher than the minimum rates, automatically applied to imports from every country not having a treaty with Turkey.[41] Inasmuch as the Lausanne treaties stipulated the application of minimum rates to imports from signatory countries, the same rates were to be applicable to imports from the United States, under the most-favored-nation clause, upon American ratification of the treaty with Turkey. When the time limit for ratification expired, the operation of the maximum rates upon American imports was averted by the negotiation of a *modus vivendi* which extended the time limit to February, 1926.[42]

In 1926, the treaty not having been ratified by the United States, the time limit was further extended to February, 1927.[43] On January

[41] United States Department of Commerce, *Commerce Reports*, January 18, 1926, p. 165.

[42] *Ibid.*, May 25, 1925, p. 489.

[43] *Ibid.*, August 2, 1926, p. 304.

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18, 1927, however, the Senate of the United States finally rejected the treaty. That action placed American interests in Turkey in such a plight that the State Department negotiated a new *modus vivendi* on February 2 following.[44]

Under the terms of this last arrangement, the governments of the two countries agreed to establish diplomatic and consular relations, based upon principles of international law. The essential provision of the rejected Turco-American treaty and its annexes constitute the basis for treatment, reciprocally, of Turkish nationals in the United States and of American citizens in Turkey. The provisions of the previous *modus vivendi* governing Turkish-American commercial relations are extended for a period of one year, dating from February 20, 1927. At the end of that time, the arrangement was to be automatically continued for a period of three months, unless in the meantime a treaty should have been negotiated or either party should have asked for a reconsideration of its provisions.

In June, 1927, Joseph C. Grew was appointed United States ambassador to Turkey. He arrived at his post and assumed his duties on September 18; and on December 5, President Coolidge accepted the credentials of Ahmed Mouhtar Bey as ambassador of the Angora government. Thus, after a breach of ten years, Turkish-American diplomatic relations have been resumed. No treaty, however, regulating the relations of the two governments is as yet in force.

LELAND J. GORDON.

University of Pennsylvania.

[44] *Levant Trade Review*, March, 1927, pp. 91–93.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The twenty-fourth annual meeting of the American Political Science Association will be held at Chicago, December 27–29. The headquarters will be at the Stevens Hotel, and all sessions will take place there. The American Economic Association and various other organizations will be meeting in the same hotel on the same days. The program committee (Professor S. Gale Lowrie, University of Cincinnati, chairman) is planning a more extended series of round tables than at the Washington meeting of last year, and there will be the customary luncheon discussions and general sessions. Full announcement will be made in the November issue of the *Review*. Professor Kenneth Colegrove, of Northwestern University, is chairman of the committee on local arrangements.

Professor Walter J. Shepard, of the Brookings Graduate School, Washington, D. C., has accepted an appointment as dean of the college of liberal arts at Ohio State University.

Professor N. Dwight Harris has resigned the headship of the department of political science at Northwestern University, which he has held since 1915, and has been succeeded by Professor A. R. Hatton.

Dr. Leo S. Rowe, director-general of the Pan American Union, attended the Sixth International Conference of American States held at Havana, January 16 to February 20, as a member of the delegation of the United States.

Dr. Charles A. Beard, who spent a portion of the past year making a survey of the government of Yugoslavia, under the auspices of the America-Yugoslav Society and the National Institute of Public Administration, returned early in May. His report will be published by the Macmillan Company.

Professor Clyde L. King, of the University of Pennsylvania has been in Europe in recent weeks as a delegate to the World Dairy Congress.

Professor Clarence A. Berdahl, of the University of Illinois, gave courses on political parties, the police power, and international

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organization at the University of Colorado during the first half of the summer quarter.

Professor Charles Fairman, of Pomona College, has been made instructor and tutor in government at Harvard University. Professor Edward M. Sait will join the staff at Pomona the coming year.

Professor Raymond G. Gettell, of the University of California, will spend the second semester of next year in Europe, studying present tendencies in political theory in England, Germany, Italy, and Russia.

Professor Charles G. Haines, of the University of California at Los Angeles, will be on leave during the first semester of 1928–29. He expects to devote his time to investigations in the field of judicial review of legislation.

Drs. Raymond Moley and Schuyler C. Wallace, of Columbia University, have been promoted to professor of public law and assistant professor of government, respectively.

Professor Orren C. Hormell, of Bowdoin College, conducted two graduate courses in political science in the summer session of the University of Michigan.

Mr. C. Walter Young has accepted an instructorship in political science at George Washington University, where he will develop courses on the Far East and international relations. During the past three years, Mr. Young has held the Willard Straight fellowship in the Far East.

Mr. Bruce Smith, of the National Institute of Public Administration, has delivered his report on rural police protection in Illinois to the Illinois Association for Criminal Justice. It will be published as part of a report of the Association covering all aspects of the administration of criminal justice in the state.

Dr. H. W. Dodds has resigned the secretaryship of the National Municipal League in order to devote more of his time to the editorship of the *National Municipal Review* and of the League's monograph series. His successor as secretary is Mr. Russell Forbes, since 1926 director of the Municipal Administration Service.

Mr. Andrew J. Russell, formerly Woolsey scholar at Yale University and instructor in government at Berea College, has been made professor of public law at the University of Louisville.

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Dr. Frank W. Prescott, of Tulane University, has been appointed Adolph S. Ochs professor and head of the department of government at the University of Chattanooga.

Under the direction of Professor Herbert Heaton, a "seven-capitals European political science tour" has been organized at the University of Minnesota. Two courses regularly offered in the department of political science are being given in connection with the "laboratory" experiences of the tour.

Professor Ralph S. Boots, of the University of Pittsburgh, gave courses on international relations and European government in the summer session at the University of Nebraska, and Professor Elmer D. Graper, of the same institution, taught European government and American political parties at Northwestern University.

Professor Robert E. Cushman has been appointed to the Goldwin Smith professorship of government at Cornell University. Mr. George E. G. Catlin has been promoted to a full professorship in the same institution. By special arrangement, he is to be in residence only during the second semester of each year. The first semester he will spend in England, where he is attached to the editorial staff of the *Yorkshire Post* and is also carrying forward a research project.

Dr. Otto Graf zu Stolberg Wernigerode, who is in the United States collecting material in the archives of the Department of State at Washington, delivered a lecture at Northwestern University on July 18 on the subject of "Bismarck and his American Friends."

Dr. Cortez A. M. Ewing, of Pennsylvania State College, and Mr. J. W. Errant, of the University of Chicago, have accepted assistant professorships of political science at the University of Oklahoma.

Dr. Frank Paddock, of Ohio State University, has been appointed assistant professor of political science at Temple University, Philadelphia.

Professors John Alley and Harry Barth, of the University of Oklahoma, will be on leave during part or all of the next academic year.

Mr. J. Mark Jacobson, who has completed his residence requirements for the doctorate at Brown University, has been made an instructor in political science at the University of Wisconsin.

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Dr. C. W. Fornoff has been added to the instructional force in history and political science at the University of Arkansas and will enter upon his duties in September. He has been on the staff at the University of Illinois.

Mr. John J. George, instructor in political science at the University of Michigan, received the doctor's degree from that institution in June and has been appointed professor of history and government at Converse College, Spartanburg, S.C.

Professors Walter Thompson and Waldo Schumacher, of the University of Oklahoma, have accepted positions in Stanford University and the University of Oregon, respectively.

Mr. Francis G. Wilson, of Stanford University, has been appointed assistant professor at the University of Washington. He will have charge of the work in political theory during the continued absence of Professor W. H. George, who will remain at the University of Hawaii until the middle of the next academic year.

Mr. W. V. Holloway, graduate student at the University of Wisconsin, has been appointed instructor in political science at the University of Alabama.

Professor Albert R. Ellingwood, of Northwestern University, gave courses on constitutional law and international law at the University of Southern California during the summer session.

Mr. Edward M. Burns, formerly a graduate assistant in political science at the University of Pittsburgh, has accepted an instructorship in political science and history at Rutgers University.

Professor Harwood L. Childs, formerly of William and Mary College, has become assistant professor of political science at Bucknell College.

Professor Leonard D. White, of the University of Chicago, is spending the summer in London, where he is concluding the field work for his study of war and post-war British civil service. Professors Jerome G. Kerwin and Fred L. Schuman are also in Europe. The former is studying urban regions and also visiting the Irish Free State; the latter is in Russia.

Mr. Robert F. Stedman, of the University of Chicago, has been appointed instructor in political science at Akron University; Mr.

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Samuel J. Hocking has been made extension professor of political science at the University of Alabama; and Miss Grace Givin has accepted an instructorship at Buena Vista College.

Dr. William C. Dennis, corresponding secretary of the American Society of International Law, is to give instruction in international law at the American University, Washington, D. C., beginning in October.

The department of government at the University of Texas announces the promotion of Mr. Charles A. Timm to an associate professorship and of Mr. Roscoe C. Martin to an adjunct professorship. Mr. Martin has been doing graduate work at the University of Chicago.

Dr. Irvin Stewart resigned as assistant solicitor of the Department of State to become associate professor of government at the University of Texas, beginning with the second semester, 1927–28. Professor Stewart delivered two lectures at the Los Angeles Institute of Public Affairs in July, after which he went to Duke University to teach during the second term of the summer session. Dr. R. R. Wilson, associate professor of political science at Duke University, gave a course in international law during the second term of the summer session at the University of Texas.

Professor Karl F. Geiser, of Oberlin College, will spend the coming academic year in Europe, where he plans to complete a book dealing with the political thought and life of modern Germany. He expects, among other things, to make a first-hand study of German local government. Professor Geiser's substitute at Oberlin will be Dr. Herbert W. Briggs, formerly of the Johns Hopkins University and more recently on the staff of the Foreign Policy Association.

At the University of California at Los Angeles Mr. C. A. Dykstra, lecturer in municipal government, has been appointed to a professorship of political science. Dr. Malbone W. Graham, Jr., has been raised to the rank of associate professor, and Dr. Marshall Dimock, of the Johns Hopkins University, has been appointed instructor.

The School of Government at George Washington University will open on September 19. Two courses will be offered: a general course for men and women who wish to prepare for public service, and a more specialized course for those who want to prepare for the foreign service.

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Under the auspices of the Cooper Foundation, A. D. Lindsay, master of Balliol College, Oxford University, is to deliver a course of four or five lectures at Swarthmore College near the middle of the coming academic year.

Mr. W. P. Maddox, assistant professor of political science in the University of Oregon, has resigned in order to become acting associate professor of political science in the University of Virginia. He entered upon his new duties in the summer session.

Among speakers at the institute of public affairs and international relations held at the University of Georgia, July 9–24, were Professor James W. Garner, of the University of Illinois, whose lectures dealt with the office of president of the United States; Count Carlo Sforza, who discussed problems of European peace; and Mr. A. T. Polyzoides, who discussed present conditions in Europe.

Mr. G. Kenneth Reiblich received his doctorate at the Johns Hopkins University in June and is to be instructor in political science at New York University. Among other men receiving their degrees at Johns Hopkins at the same time are Mr. E. Pendleton Herring, who will be tutor and instructor in government at Harvard University; Mr. Leslie B. Tribolet, who has accepted an assistant professorship of political science at the University of Florida; and Mr. Frederick S. Dunn, now a research associate with the Council for Research in the Social Sciences at Columbia University.

Dr. Allan F. Saunders, of the University of Wisconsin, will join the staff of the political science department of the University of Minnesota as assistant professor in the fall. He will give courses on the elements of political science, American political ideas, and comparative federal government. Mr. O. P. Field, formerly assistant professor of political science at the University of Indiana, and more recently a graduate student in law at Yale University, will join the staff as an associate professor and will have charge of courses in public law. Dr. Lennox A. Mills, lecturer in the department during the winter and spring quarters, becomes assistant professor, his work being in the fields of world politics, colonization, and the government of the British Empire.

The following appointments in political science have been made to the staff of the School of Citizenship and Public Affairs at Syracuse

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University for the year 1928–29: Dr. Karl C. Leebrick, on leave of absence from the University of Hawaii, professor of international affairs; Dr. Herman K. Beyle, formerly of the University of Minnesota, professor of political science; Dr. Ernest S. Griffith, University of Liverpool, associate professor of political science; and Dr. Charles H. Hyneman, University of Illinois, and Mr. A. Blair Knapp, graduate student at Syracuse University, instructors in political science. Professor Ralph E. Himstead has received a research fellowship from the Harvard Law School and will be on leave of absence for one year. Appointments in political science for the current summer session include Drs. Schuyler C. Wallace and P. H. Odegard, of Columbia University.

In view of general lack of agreement as to the meaning of the term "citizenship," a series of special addresses has been arranged by the School of Citizenship and Public Affairs at Syracuse University, each being devoted to a discussion of the social implications of a particular calling or profession, and given by an outstanding speaker selected from the field discussed. Speakers who have thus far appeared are Bishop Francis J. McConnell, of the Methodist Episcopal Church; Dean Roscoe Pound, of the Harvard Law School; Senator W. E. Borah; Dr. George Crile, surgeon of Cleveland, Ohio; Dr. Charles A. Beard; Dr. T. V. Smith, of the University of Chicago; Mr. Morris L. Cooke, consulting engineer of Philadelphia; William Green, of the American Federation of Labor; and Justice Harlan Stone of the U. S. Supreme Court. It is planned to conclude the series in the early fall by two more lectures, one to be given by a representative manufacturer and the other by a financier.

Several members of the staff of the Syracuse School of Citizenship and Public Affairs are engaged in a joint research project dealing with the water-power problem in New York State. The problem is being analyzed from the following viewpoints: engineering, economic, accounting, sociological and social psychological, and administrative and legal. The staff has been augmented by an engineer, Mr. J. B. Reid of New York; an economist specializing in public utilities, Dr. Ralph L. Dewey, of Ohio State University; and a consulting accountant, Mr. Adrian Landman of New York. The introduction to the report, in which the history of the water-power situation has been analyzed to date, was written by Mr. A. Blair Knapp. It is being published in advance of the full report.

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The Social Science Research Council's committee on research fellowships has been reorganized and is now composed as follows: Professors A. M. Schlesinger, of Harvard University (chairman); Robert C. Brooks, of Swarthmore College; F. Stuart Chapin, of the University of Minnesota; V. A. C. Henmon, of the University of Wisconsin; and Wesley C. Mitchell, of Columbia University. Dr. John V. Van Sickle, assistant professor of economics in the University of Michigan, has joined the staff of the Council as fellowship secretary.

The annual summer conference of the Social Science Research Council will be held at Hanover, New Hampshire, from August 18 to September 1. In order to concentrate the work of the Conference, the plan is being tried this year of having most of the advisory committees meet before August. The only committees scheduled to meet during the Hanover session are those on corporate relations, population, interracial relations, and scientific method in the social sciences. Further concentration is evidenced by the plan to have the evening discussions center around the research problems and opportunities with which the Council and its various committees are primarily concerned.

Harris political science prizes, offered annually to undergraduates of colleges and universities in certain Middle Western states for essays on designated subjects, were awarded in May as follows: first prize ($150) to Mr. Israel M. Labovitz, University of Minnesota, for an essay on "The Powers and Methods of Urban Utility Regulation in Minnesota;" second prize ($100) to Mr. Orval Henry Austin, State University of Iowa, for an essay on "Rule-Making: Legislative versus Judicial;" and honorable mention to Mr. Dexter Munson, University of Wisconsin, for an essay on "The Evolution of the Federal Trade Commission." Information concerning this contest, including the list of subjects that may be written upon in 1929, may be obtained from Professor Kenneth Colegrove, 105 Harris Hall, Northwestern University, Evanston, Ill.

The recently organized National Committee on Municipal Standards held its first meeting at New York on May 21. The members are: Louis Brownlow, Charles E. Merriam, and R. W. Rigsby, of the International City Managers' Association; Charles A. Beard, A. E. Buck, and H. M. Waite, representing the National Municipal League; and C. E. Ridley, Henry P. Seidemann, and Lent D. Upson, of the

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Governmental Research Association. The work of the committee is to be directed toward the development of standards of measurement which may be used as a basis for evaluating the services and results of municipal government. Mr. H. M. Waite, of Cincinnati, was made chairman, and Mr. C. E. Ridley will act as secretary, with headquarters at 261 Broadway, New York City.

The ninth annual meeting of the Southwestern Political and Social Science Association was held at Baton Rouge, April 20 and 21, in conjunction with the Louisiana State Conference for Social Betterment and the Southwestern International Relations Clubs. The program consisted of sectional meetings of the following divisions: agricultural economics, business administration, government, history, sociology, and economics. Visitors at the meeting included Professor Manley O. Hudson, of Harvard University, and Mr. Raymond T. Rich, general secretary of the World Peace Foundation. Dr. H. Y. Benedict, president of the University of Texas, was elected president of the Association for the ensuing year.

As the result of an arrangement formulated by Dr. Leo S. Rowe and the directors of the American Academy of Political and Social Science, a Los Angeles center of the Academy was formed at a meeting of the local members of the Academy held at the University Club in Los Angeles on May 4. The officers of the Los Angeles center are Charles G. Haines, chairman, and Ordean Rockey, secretary-treasurer. A committee on permanent organization consists of Professors C. A. Dykstra (chairman), and Gordon S. Watkins, of the University of California at Los Angeles; Professor Roy Malcomb, of the University of Southern California; Judge Frank G. Finlayson, of Los Angeles; Mr. W. J. Ford, of Los Angeles; Mr. Raphael Herman, of Beverly Hills; and Mrs. Robert J. Burdette, of Pasadena. The first regular meeting of the Center was held jointly with the Los Angeles Institute of Public Affairs, July 9–13, at the University of California at Los Angeles. Arrangements are being made for two or three regular sessions each year, and for the publication of the proceedings of such sessions.

The fifth session of the Geneva School of International Studies opened on July 9, and some phases of its work will continue to the end of the September session of the League Assembly. Professor Alfred Zimmern is, as usual, the director, and the lecturers represent

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many different countries. Americans listed to appear on the program include Professors Bernadotte E. Schmitt, of the University of Chicago; Julian Park, of the University of Buffalo; William E. Hocking, of Harvard University; Samuel M. Lindsay, of Columbia University; Robert J. Kerner, of the University of California; Earle B. Babcock, of New York University; and Dr. Stephen P. Duggan, of the Institute of International Education.

The sixth Commonwealth Conference, held under the auspices of the State University of Iowa, took place at Iowa City on June 9–11. Attention centered on the outstanding issues of the current presidential campaign, the topics for five successive round-table discussions being Agricultural Relief, The Government and Business, The Federal Government and the States, The Eighteenth Amendment, and Foreign Policies. There were several brief addresses in the evenings. The regular summer meeting of the Executive Council of the American Political Science Association and Board of Editors of the *American Political Science Review* was held in conjunction with the Conference. The Association's committee on policy also held a meeting.

The eighth annual session of the Institute of Politics at Williamstown runs from August 2 to 30. Round-tables and their leaders are as follows: The Problems of the Pacific, Professor George H. Blakeslee, Clark University; Protection of Citizens Abroad, Professor Edwin M. Borchard, Yale University; Inter-American Trade and Commerce, Professor Harry T. Collings, University of Pennsylvania; Agriculture and the Agricultural Surplus: An International Approach, Professor C. R. Fay, University of Toronto; The Caribbean Area, Professor Charles W. Hackett, University of Texas; Modern Turkey and Its Problems, Halide Edib Hanum, of London; Population Around the Pacific Rim, Professor R. D. McKenzie, University of Washington; Social Readjustment through Voluntary Control, Professor Graham Wallas, London School of Economics and Political Science. The lecture courses are: Modern Turkey and Its Problems, Halide Edib Hanum; Germany's Foreign and Domestic Policies, Dr. Otto Hoetzsch, of Berlin; Current Political Problems in Belgium, Dr. Louis Pierard, of Brussels; and Social Readjustment through Voluntary Control, Professor Graham Wallas. A general conference on problems of Africa will be conducted by Dr. Raymond L. Buell, of the Foreign Policy Association, during the closing days of the session.

The second session of the Institute of Public Affairs at the University of Virginia extends through the period August 6–18. As last year,

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the subjects for discussion relate to the national, state, and local governmental problems and policies of the United States. The program calls for daily public addresses, a daily "open forum," and an extensive series of round-tables, with subjects and leaders as follows: The Agricultural Problem, Professor John D. Black, Harvard University; Women in Public Affairs, President Aurelia H. Reinhardt, Mills College; Our Latin-American Relations, Professor John H. Latané, Johns Hopkins University; Municipal Management, Professor Thomas H. Reed, University of Michigan; County and State Government, Professor Kirk H. Porter, State University of Iowa; Political Parties, Professor A. R. Hatton, Northwestern University; The Tax Problem, Hon. Mark Graves, tax commissioner of the state of New York; The Press in Public Affairs, Dr. Victor Rosewater; Economic and Industrial Development of the South, President Bradford Knapp, Alabama Agricultural and Mechanical College; and Arbitration of Commercial Disputes, Dr. W. A. Sturges, Yale University Law School.

The Resignation of President and Vice-President. In his interesting book of reminiscences entitled *As I Knew Them*, Henry L. Stoddard makes the following statement: "Of the four causes of vacancy in the presidency listed in the Constitution, only two are definitely operative. Death, of course, is an obvious fact and the vice-president automatically succeeds; so would be removal by impeachment. But to whom would a president resign? Would he merely walk out of the White House, and notify the vice-president? Law provides for the resignation of every other officer except the president and vice-president. Of course, resignation is a remote contingency, but since it is mentioned, a way to resign ought to be definitely provided. I know that Vice-President Fairbanks was anxious to leave Washington on account of his wife's health. He attributed her death to the exactions of her social duties; he would gladly have resigned if he had had any precedents" (p. 546).

Vice-President Fairbanks had both precedent and legal sanction for his contemplated resignation. On December 28, 1832, John C. Calhoun wrote a letter to Secretary of State Edward Livingston (addressing him mistakenly as "H" Livingston), in which he informed him that, "Having concluded to accept of a seat in the Senate to which I have been elected by the legislature of this state [South Carolina], I herewith resign the office of vice-president of the United States."

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The late Gaillard Hunt, in his life of Calhoun, says that Calhoun addressed the secretary of state "because that officer receives the returns of the votes of electors for president and vice-president and transmits them to the president of the Senate and the speaker of the House" (p. 159). Mr. Hunt here fell into a partial error. The Constitution stipulates that the votes of the electors shall be "directed to the president of the Senate." The law of March 1, 1792, relative to the election of president and vice-president, provides that "in case there shall be no president of the Senate at the seat of government on the arrival of the persons entrusted with the lists of the votes of the electors, then such persons shall deliver the lists of votes in their custody into the office of the secretary of state, to be safely kept and delivered over, as soon as may be, to the president of the Senate."

It would be the exception, therefore, rather than the rule for the secretary of state to receive the returns of the electoral votes. Not only that, but Section 11 of this same act of March 1, 1792, specifically enacts, "That the only evidence of a refusal to accept, or of a resignation of the office of president or vice-president, shall be an instrument in writing declaring the same, and subscribed by the person refusing to accept or resigning, as the case may be, and delivered into the office of the secretary of state" (Revised Statutes, Sec. 151). Calhoun undoubtedly was aware of this provision and acted accordingly. No other official action with respect to his resignation appears to have been taken. The Senate had met on December 3, 1832, and, in Calhoun's absence, had elected Hugh L. White of Tennessee president *pro tempore*. When Calhoun presented his credentials as senator he was sworn in in the usual manner.

Since this section of the act of March 1, 1792, has never been repealed, it is to be presumed that any president or vice-president could resign in the manner there provided. To date, Calhoun is the only one who has done so.

University of Michigan. EVERETT S. BROWN.

County Consolidation in Tennessee. In an attempt to reduce the cost of government in Tennessee, Mr. T. R. Preston, chairman of the state tax commission recently appointed by the governor, and Mr. A. L. Childress, state tax superintendent, have suggested a reduction in the number of counties. This idea was probably prompted by the startling fact that county government in Tennessee costs nineteen times the amount spent for state government. Governor A. E. Smith,

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of New York, it will be recalled, recently suggested a similar reduction in the number of New York counties, with the same idea of economy in mind.

There are two methods by which the desired reduction in the number of counties, and thus the cost of government, can be realized: first, the natural absorption of a small county, or of several small counties, by a large county, and second, the more artificial method of consolidation of all counties into a smaller number of units by legislation or constitutional amendment. Both plans either are being worked out or have been suggested for Tennessee. It is altogether logical that such a movement should start in Tennessee. This state has inherited the English county in as pure form as any commonwealth which can trace its institutional origins directly or indirectly to the mother country, yet the state's administration today is a notable example of what can be done in state administrative reorganization.

In 1919 two counties consolidated; in 1927 the county courts of two counties agreed to a consolidation, and a measure requesting permission to consolidate will be presented to the next legislature; and two state officers have presented a plan for redistricting the state, reducing the number of counties from ninety-five to less than fifty. To some observers these are startling facts. At all events, they show that some attempt is being made to explore the "dark continent of American politics."

In 1919 Hamilton county, with Chattanooga as the county seat, absorbed James county, the legislature granting its permission upon the request of the latter and the acquiescence of the former. This absorption of a small county by a larger county has proved successful. The tax-rate in James county has been cut in half, and at the same time improved roads have increased from less than five to over forty-five miles, and schools are now in session eight and nine months as compared with four months during the year before the consolidation. In general, the county is in a much better condition than ever before.

Because of this successful experiment, Meigs county, which borders Hamilton on the north, held a joint court meeting with Hamilton last year, and it was agreed that the two counties should sponsor a bill in the next legislature to allow Hamilton county to absorb Meigs. The tax rate in Meigs county now is $4.00, while in Hamilton it is $1.40.

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With the same idea of tax reduction in mind, Mr. A. P. Childress, in answer to a request for suggestions as to the means of reducing taxes from Mr. Preston, chairman of the state tax commission, president of the Hamilton National Bank of Chattanooga, and president of the American Bankers' Association, proposed that the ninety-five counties of the state be consolidated into eleven units, comprising on an average eight or nine counties, and each with an area of some 3,790 square miles and a population of about 211,884. These new counties should be grouped around an important town, the highway and railroad center of each district. In order to overcome the sentimental objection to changing county names, Mr. Childress, suggested that the eleven new units be named as follows: George Washington county, John Sevier county, Robert E. Lee county, Andrew Johnson county, Benjamin Franklin county, Andrew Jackson county, James K. Polk county, Sam Houston county, Davy Crockett county, James Madison county, and Bedford Forrest county.

Under the present arrangement of counties, each of the ninety-five units supports, on an average, twenty principal officers, costing the average county some $200,000. For the total number of counties this means 1,900 chief officers and an annual expenditure for this item alone of $19,000,000. Assuming that a similar plan of internal organization would be followed in the new units, the total cost would not greatly exceed $2,200,000.

Of course many objections to the plan will be raised, for it is no small undertaking to reduce the number of counties from ninety-five to eleven. Therefore, as a matter of expediency, Mr. Preston has suggested that the number be reduced to about fifty, and that the method be that of absorption, as has been employed in the case of Hamilton and James counties. Certainly a beginning of reform could be made by grouping several counties about the four chief cities of the state, i.e., Memphis, Nashville, Knoxville, and Chattanooga; and the process has actually begun in the Chattanooga district.

JOHN W. MANNING.

Vanderbilt University.

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DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY PITMAN B. POTTER
University of Wisconsin

POLITICAL PHILOSOPHY AND PSYCHOLOGY

**Summerfield Baldwin, 3d;* A.B., Harvard, 1917; A.M., *ibid.*, 1917. The Doctrine of the Common Weal. *Harvard.*

**Arthur S. Bearsley;* LL.B., University of Washington, 1918; B.S., *ibid.*, 1924. An Introductory Course in Legal Bibliography and Research—A Laboratory Method. *Washington.*

Norman Woods Beck; A.B., Chicago, 1923. A Group of Political Scientists as Inventors. *Chicago.*

Jesse Thomas Carpenter; A.B., Duke, 1920; A.M., Iowa, 1925. Sectional Minorities and the Federal Constitution in the Ante-bellum South: A Study in Southern Political Thought. *Harvard.*

Hsi-Lin Chao; A.B., Reed, 1924; A.M., Columbia, 1925. The Changing Conceptions of Sovereignty. *Johns Hopkins.*

**Su-Ching Chen;* A.B., Fuh Tan, China, 1925; A.M., Illinois, 1926. Recent Theories of Sovereignty. *Illinois.*

Bernard Freyd; A.B., University of Washington, 1916; A.M., *ibid.*, 1918. The Political Theory of Otto Gierke, with Special Reference to his Work on Johannes Althusius. *Washington.*

Grace Givin; A.B., Kansas, 1914; B. S., *ibid.*, 1916. Louise DeKoven Bowen as a Political Leader. *Chicago.*

Clyde W. Hart; A.B., Milliken, 1915. Political Theory in American Literature. *Chicago.*

Mary J. Herrick; A. B., Northwestern, 1916. Jane Addams; a Study in Leadership. *Chicago.*

(1) Similar lists have been printed in the *Review* as follows: IV, 420 (1910); V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926), XXI, 645 (1927). No returns were received in preparation of the present list from the Brookings Graduate School, Clark, Ohio, Texas, and one or two other institutions at which, it is believed, graduate degrees are awarded. Attention is called to a list of theses in preparation at universities in Great Britain, published in *Economica*, No. 23 (June, 1928).

[2] Asterisks indicate dissertations completed during the current year.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Edward C. Jenkins; A.B., Swarthmore, 1927. Campaign Technique Traits of Certain Political Leaders. *Chicago.*

**Helen D. Hill*; A.B., Chicago, 1921. Anti-Stateist Theory in Recent Times. *Chicago.*

**C. O. Johnson;* A.B., Richmond, 1917; A.M., Chicago, 1921. Carter Harrison as a Political Leader. *Chicago.*

Mary Z. Johnson; Ph.B., Chicago, 1924. Development of Democratic Theory since 1848. *Chicago.*

Agnes Smith Knowlton; B.S., Utah, 1918; M.S., *ibid.*, 1920. Reed Smoot as a Political Leader. *Chicago.*

Charles R. Layton; A.B., Otterbein, 1913; A.M., Michigan, 1917. The Political Thought and Influence of John Bright. *Michigan.*

Alfred Chih Tai Li; A.B., Ohio Wesleyan, 1925; A.M., Ohio State, 1926. The Political Philosophy of Sun Yat-Sen. *New York University.*

Ti-Tsun Li; A.B., Wisconsin, 1925; A.M., *ibid.*, 1926. The Political Theories of Sun Yat-Sen. *Wisconsin.*

**Madge M. McKinney;* A.B., Western Reserve, 1916; M.S., *ibid.*, 1919. An Analysis of the Traits of Citizenship. *Chicago.*

Irma H. Reed; A.B., Radcliffe, 1924. The Political Theory of the Enlightened Despots. *Radcliffe.*

Pearl Robertson; Ph.B., Chicago, 1923; A.M., *ibid.*, 1925. Grover Cleveland as a Political Leader. *Chicago.*

**Dorothy Schaffter;* A.B., Iowa, 1924; A.M., *ibid.*, 1926. The Bicameral System in Practice. *Iowa.*

John Frederick Thompson; A.B., Pomona, 1927. Political Activities of Organized Groups in Massachusetts. *Harvard.*

UNITED STATES GOVERNMENT AND POLITICS AND CONSTITUTIONAL LAW

**Harold F. Alderfer;* A.B., Bluffton, 1922; A.M., Syracuse, 1926. The Personality and Politics of Warren G. Harding. *Syracuse.*

**Julius R. Bell;* A.B., Valparaiso, 1923. Public Purpose in Taxation and Eminent Domain. *Indiana.*

Eleanor Bontecou; A.B., Bryn Mawr, 1913; J.D., New York University, 1917. The Rule-Making Power and Federal Legislation. *Radcliffe.*

M. E. Brake; Ph.B., Chicago, 1920; J.D., *ibid.*, 1920. Criminal Law Enforcement by Injunction under Federal Legislation. *Chicago.*

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Paul Herman Buck; A.B., Ohio State, 1921; A.M., *ibid,* 1922. Party Divisions in the Van Buren and Tyler Administrations. *Harvard.*

Ralph D. Casey; A.B., Washington, 1913; A.M., *ibid.,* 1919. Propagandist Methods of Political Parties. *Wisconsin.*

Royden Dangerfield; B.S., Brigham Young, 1925. The Senate's Influence on the Foreign Relations of the United States. *Chicago.*

**Marshall E. Dimock;* A.B., Pomona, 1925. Congressional Investigating Committees. *Johns Hopkins.*

**R. M. Duncan;* Origins of the American Concept of Citizenship. *Princeton.*

Russell Forbes; A.B., Westminster, 1918; A.M., Columbia, 1919. Administration of Public Purchasing. *Columbia.*

**Curtis W. Garrison;* A.B., University of Richmond, 1923. The National Election of 1824. *Johns Hopkins.*

Lawrence V. Howard; A.B., Southern College, 1920. The Method of Settling International Controversies by the United States. *Chicago.*

Clarence L. Kincheloe; A.B., California, 1923; J.D., *ibid.,* 1925. The Growing Relative Power of the National Executive since 1885. *California.*

**Maria Lanzar;* Ph.B., University of the Philippines, 1922; A.M., *ibid.,* 1923. The Anti-Imperialist League. *Michigan.*

Joseph T. Law; A.B., Drury, 1915; A.M., Wisconsin, 1921. Constitutional Limitations upon the Delegation of Legislative Power. *Wisconsin.*

Albert Lepawsky; Ph.B., Chicago, 1927. Choice and Tenure of Judges in the United States. *Chicago.*

**P. S. Lum;* A.B., Princeton, 1923. The Administration of the United States War Department. *Johns Hopkins.*

Alexander Norman; A.B., University of North Dakota, 1919; A. M., *ibid.,* 1920. Rights of Aliens under the Federal Constitution. *Columbia.*

Mildred Bertha Palmer; A.B., Pomona, 1921; A.M., Radcliffe, 1923. The Congressional Election of 1858, with Regard to the Development of the Republican Party. *Radcliffe.*

S. Lyle Post; A.B., University of California at Los Angeles, 1925. Methods of Coördination in American National Governmental Administration. *California.*

Rex M. Potterf; A.B., Indiana, 1918; A.M., Columbia, 1923, and Indiana, 1926. The Treaty of Versailles before the United States Senate. *Wisconsin.*

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Charles C. Rohlfing; B.S., Pennsylvania, 1923; A.M., *ibid.*, 1925. National Regulation of Aviation in the United States. *Pennsylvania.*

Helen R. Rosenberg; A.B., California, 1923; A.M., *ibid.*, 1924. The Vice-Presidency of the United States. *California.*

George A. Shipman; A.B., Wesleyan, 1925; A.M., *ibid.*, 1925. The Judicial Doctrines of Justice Stephen J. Field. *Cornell.*

Elmer Lacey Shirrell; B.L., California, 1914; A.M., *ibid.*, 1925. Administrative Organization of the United States Veterans Bureau. *Stanford.*

**Frank M. Stewart;* A.B., Texas, 1915; A.M., *ibid.*, 1917. History of the National Civil Service Reform League. *Chicago.*

Tienkai Lincoln Tan; A.B., Peking Teachers' College, 1922; A.M., Stanford, 1924. The Foreign Policy of Woodrow Wilson. *Stanford.*

Harold Tascher; A.B., Illinois, 1925; A.M., *ibid.*, 1926. Industrialization and the Consular Service. *Illinois.*

Hugo Wall; A.B., Stanford, 1927. Occupational Licenses and Permits; their History and Administration. *Stanford.*

**A. J. Zurcher;* The Theory and Fact of Presidential Power. *Princeton.*

STATE AND LOCAL GOVERNMENT IN THE UNITED STATES

**Francis Robert Aumann;* A.B., Ohio Wesleyan, 1921; A.M., Ohio State, 1925. The Administration of Justice in Iowa Municipalities. *Iowa.*

Helen Elizabeth Brennan; A.B., Radcliffe, 1920; A.M., Bryn Mawr, 1921. The Development of Separate Departments of Government in Massachusetts, 1628-1780. *Radcliffe.*

Roy Edward Brown; A.B., Iowa State Teachers' College, 1923. Police Organization and Administration in Iowa. *Iowa.*

Daniel B. Carroll; A.B., Illinois, 1915; The Unicameral Legislature of Vermont. *Wisconsin.*

Keith Carter; A.B., Randolph-Macon, 1907; A.M., Columbia, 1925. Criminal Appeals in Texas. *Columbia.*

C. H. Chang; St. John's University, Shanghai, 1924; A.M., Columbia, 1925. Police Administration in New York, Chicago, and Philadelphia. *Illinois.*

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E. DeHaas; A.B., Hunter College, 1923; A.M., Columbia, 1925. The Bail-bond. *Columbia.*

Lowry A. Doran; A.B., Drury, 1910; A.M., Chicago, 1917. The Party System in Maine. *Chicago.*

Lavinia M. Engle; A.B., Antioch, 1912. County Government in Maryland. *Johns Hopkins.*

**C. R. Erdman, Jr.;* The First Constitution of New Jersey. *Princeton.*

Russell Ewing; A.B., Minnesota, 1923; A.M., Columbia, 1924. The Problem of Personnel under City Management. *Columbia.*

Sonya Forthal; A.B., Wisconsin, 1922; A.M., *ibid.*, 1923. An Analysis of the Functions of Precinct Committeemen. *Chicago.*

Harry J. Green; A.B., Johns Hopkins, 1926; LL.B., Maryland, 1927. The Maryland Legislature. *Johns Hopkins.*

Victor Hunt Harding; LL.B., Syracuse, 1907; A.B., Stanford, 1925. Non-Voting in California. *Stanford.*

**Jacob Mark Jacobson;* A.B., Brown, 1926; A.M., *ibid.*, 1926. State Administrative Reorganization: a Study and Evaluation of Proposed and Adopted Plans. *Brown.*

**David Wilbur Knepper;* A.B., Iowa State Teachers' College, 1923; A.M., Iowa, 1927. Some Aspects of Municipal Finance in Iowa. *Iowa.*

Horace J. Knowlton; A.B., Utah, 1920; LL.B., *ibid.*, 1923; J.D., Chicago, 1925. Salaries and Wages in the Chicago Civil Service, 1910–1925. *Chicago.*

W. Rolland Maddox; A.M., Ohio Wesleyan, 1923; A.M., Cincinnati, 1924. Municipal Home Rule in Ohio; an Evaluation. *Michigan.*

Roscoe C. Martin; A.B., Texas, 1924; A.M., *ibid.*, 1925. The Populist Movement in Texas. *Chicago.*

**Bertram W. Maxwell;* A.B., Minnesota, 1917; A.M., Iowa, 1923. Contemporary Municipal Government in Germany. *Iowa.*

David M. Maynard; B.S., Princeton, 1922; A.M., Columbia, 1925. Operation of the Referendum in Chicago. *Chicago.*

George H. McCaffrey; A.B., Harvard, 1912; A.M., *ibid.*, 1913. The Government of Metropolitan Boston. *Harvard.*

Joseph McGoldrick; A.B., Columbia, 1923; A.M., *ibid.*, 1923. Municipal Home Rule, 1916–1928. *Columbia.*

C. McKensie; A.B., Dartmouth, 1920; A.M., Columbia, 1921. The New Hampshire Town. *Columbia.*

**W. C. Murphy;* A.B., Arkansas, 1909; A.M., Chicago, 1912. County Government in Arkansas and Mississippi. *Illinois.*

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Spencer D. Parratt; A.B., Utah, 1924. Organization of Governments in the Regional Area of Chicago. *Chicago.*

**John McDonald Pfiffner;* A.B., Iowa, 1916; A.M., *ibid.*, 1917. The Mayor in Iowa Municipalities. *Iowa.*

Mary Elizabeth Pidgeon; A.B., Swarthmore, 1913; A.M., Virginia, 1924. Chicago Mayoralty Election of 1927. *Chicago.*

Joseph Pois; A.B., Wisconsin, 1926; A.M., Chicago, 1927. The Recruitment of Politics. *Chicago.*

Julius Prufer; A.B., Roanoke, 1920; A.M., *ibid.*, 1921. A Study of Non-Voting in Virginia. *Chicago.*

**G. Kenneth Reiblich;* A.B., Johns Hopkins, 1925. A Study of Judicial Administration in the State of Maryland. *Johns Hopkins.*

Clarence Ridley; B.C.E., University of Michigan, 1914; A.M., Columbia, 1921. Means of Measuring Municipal Government. *Syracuse.*

**John T. Salter;* A.B., Oberlin, 1921. The Non-Partisan Ballot in Pennsylvania Cities of the Third Class. *Pennsylvania.*

Burton F. Scott; A.B., Washington, 1919. History of Police in Chicago. *Chicago.*

Roy Vivian Sherman; A.B., Iowa, 1925; A.M., *ibid.*, 1926. The Municipal Electorate in Iowa. *Iowa.*

C. R. Sherrill; A.B., Wake Forest, 1921; A.M., Columbia, 1925. Criminal Appeals in North Carolina. *Columbia.*

Milton V. Smith; A.B., Pomona, 1923; A.M., Harvard, 1925. Public Regulation of Commercial Amusements in California. *California.*

**Jacob Armstrong Swisher;* A.B., Iowa, 1917; A.M., *ibid.*, 1918. The Incorporation and Legal Status of Municipal Corporations in Iowa. *Iowa.*

**Harvey Walker;* A.B., Kansas, 1924; A.M., Minnesota, 1927. Limitations upon the Municipal Ordinance-making Power under the Constitution of the United States. *Minnesota.*

FOREIGN AND COMPARATIVE GOVERNMENT

Paul Birdsall; A.B., Harvard, 1921; A.M., *ibid.*, 1925. The History of the Royal Prerogative in England to 1649. *Harvard.*

A. G. Dewey; A.B., McGill, 1911; A.M., *ibid.*, 1913. Canada and the Control of Imperial Foreign Policy. *Columbia.*

**D. F. Fleming;* A.B., Illinois, 1916; Ph.D., *ibid.*, 1928. The Ratification of Treaties. *Illinois.*

Margaret A. Judson; A.B., Mount Holyoke, 1922; A.M., Radcliffe,

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ELECTRONIC REPRODUCTION PROHIBITED

1923. The Growth of the Theory of Parliamentary Sovereignty in England between 1640 and 1660. *Radcliffe.*

**Walter Laves;* Ph.B., Chicago, 1923. German Policy with Regard to Foreign Investments. *Chicago.*

Chuang Liu; Ph.B., Chicago, 1920. The Chinese Civil Service. *Chicago.*

Ethel Marie Manning; A.B., California, 1920; A.M., Southern California, 1926. Britannic Citizenship. *Stanford.*

**Kurt R. Mattusch;* A.M., Wisconsin, 1927. British Policy Relating to the Administration of India, 1905–1924. *Wisconsin.*

S. McCordock; A.B., Syracuse, 1918; A.M., University of Buffalo, 1926. British Policy in the Far East. *Columbia.*

Howard Pendleton; A.B., Columbia, 1921; A.M., *ibid.*, 1924. Public Prosecution in England. *Columbia.*

Gerda C. Richards; A.B., Smith, 1922; A.M., Radcliffe, 1923. The Transformation of the Tory Party after 1780. *Radcliffe.*

R. W. Rogers; A.B., Pacific, 1922; A.M., Columbia, 1926. Mediterranean Policy of Italy, 1920-1927. *Columbia.*

Masao Matsumoto Suma; A.B., Stanford, 1927; A.M., *ibid.*, 1928. Administration of Governmental Finances in Japan. *Stanford.*

Sterling H. Takeuchi; A.B., Texas, 1925; A.M., *ibid.*, 1926. Control of Foreign Relations in Japan. *Chicago.*

Edgar C. Tong; A.B., Boone, China, 1922; A.M., Missouri, 1927. Constitutional Development of China. *Columbia.*

**Choa-Kwang Wu;* A.B., Columbia, 1925. The Legal and Political Aspects of the Missionary Movement in China. *Johns Hopkins.*

INTERNATIONAL ORGANIZATION AND POLITICS AND INTERNATIONAL LAW

* *Paul S. Bachman;* B.S., Ohio State, 1922; A.M., University of Washington, 1925. John Marshall's International Law Doctrines. *Washington.*

L. M. Bishop; A.B., Dartmouth, 1906; A.M., Columbia, 1917. Arbitral Procedure. *Columbia.*

D. C. Blaisdell; B. S., Penn State, 1920; A.M. Columbia, 1926. Foreign Financial Control in Turkey. *Columbia.*

Dennis William Brogan; A.M., Glasgow, 1922. International Aspects of Irish Nationalism. *Harvard.*

* *Laverne Burchfield;* A.B., Michigan, 1921; A.M., *ibid.*, 1923. The

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Theory of American International Law: an Analysis and Criticism. *Michigan.*

Howard B. Calderwood, Jr.; A.B., Ohio Wesleyan, 1921. International Protection of Minorities in National States. *Wisconsin.*

Chung-Fu Chang; A.B., Michigan, 1923; A.M., Harvard, 1927. The Anglo-Japanese Alliance. *Johns Hopkins.*

Lin Ngo Chang; A.B., Tientsin Anglo-Chinese College, China, 1915. The Attitude of China toward the League of Nations. *Chicago.*

P. C. Chu; Nan Woo College, China, 1915. Title to Territory under International Law. *Chicago.*

* *James Quayle Dealey, Jr.;* A.B., Brown, 1920; A.B., Oxford, 1923; A.M., *ibid.*, 1928. The Navigation of Boundary and Connected Waters, Particularly as Relates to the United States. *Harvard.*

* *Frederick S. Dunn;* B.Litt., Princeton, 1914; LL.B., New York Law School, 1917. The Practice and Procedure of International Conferences. *Johns Hopkins.*

A. E. Elliott; A.B., Drake, 1915; A.M., College of Missions. Latin-American Attitude toward the Pan-American Union. *Columbia.*

Sooren Frankian; A.B., California, 1924; A.M., *ibid.*, 1926. British Foreign Policies and the League of Nations. *California.*

Frederic W. Ganzert; A.B., California, 1926; A.M., *ibid.*, 1927. Brazil and the Pacific Settlement of International Disputes. *California.*

* *C. B. Gosnell;* Compulsory Arbitration in International Law. *Princeton.*

Paul Heaton; A.B., Minnesota, 1924; A.M., *ibid.*, 1925. Extraterritoriality in China. *Chicago.*

John G. Herridon; A.B., Washington and Lee, 1910; A.M., *ibid.*, 1912. International Reciprocity in Income Taxation. *Pennsylvania.*

* *John G. Hirvey;* A.B., Oklahoma, 1923; LL.B., *ibid.*, 1925. The Legal Effects of Recognition as Interpreted by the Courts of the United States. *Pennsylvania.*

Hoen Hu; A.B., Fuh-Tan, China, 1925; A.M., Columbia, 1927. Measure of Damages in International Claims. *Columbia.*

Po-Wen Huang; A.B., Harvard, 1926; A.M., Columbia, 1923. Foreign Tariff Control of Debtor Countries. *Columbia.*

Charles S. Hyneman; A.B., Indiana, 1923; A.M., *ibid.*, 1925. The Fulfillment of Neutral Duties by the United States during the Revolutionary and Napoleonic Wars. *Illinois.*

Warren H. Kelchner; A.B., Pennsylvania, 1923; LL.B., Valparaiso, 1917. South American Relations to the League of Nations. *Pennsylvania.*

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Grayson L. Kirk; A.B., Miami, 1924; A.M., Clark, 1925. An Analysis of French Policy in Alsace-Lorraine since 1919. *Wisconsin.*

K. P. Kirkwood; A.B., University of Toronto, 1922; A.M., Columbia, 1927. The Solution of the Minority Problem in Turkey. *Columbia.*

J. A. Levandis; B.S., University of Delaware, 1921; A.M., Columbia, 1922. International Financial Control of Greece. *Columbia.*

A. M. Margalith; A.B., Johns Hopkins, 1926. An Inquiry into the Juristic Nature of the Mandate System. *Johns Hopkins.*

W. Mauck; A.B., Hillsdale, 1921; A.M., Columbia, 1927. The Saar Basin. *Columbia.*

G. A. McCleary; A.B., Ohio Wesleyan, 1917; J.D., Michigan, 1924. The Distinction between Political and Legal Questions under International Law. *Chicago.*

George W. McKenzie, Jr.; B.S., Connecticut Wesleyan, 1922; A.M., Columbia, 1924; M.F.S., Georgetown, 1925. A Study of Latin-American Boundary Problems. *New York University.*

Vera Micheles; A.B., Radcliffe, 1925; A.M., Yale, 1926. Governments *de facto,* with Special Reference to the Soviet Government. *Radcliffe.*

G. Noble; A.B., Oxford, 1915; A.M., *ibid.,* 1923. The Open Door Policy in China. *Columbia.*

Norman Judson Padelford; Ph.B., Denison, 1925. Religious Property in International Law. *Harvard.*

Yoo-Hsiang Peng; B.S., Miami, 1921; A.M., Columbia, 1922. Relations between China and France. *Columbia.*

Allen Thomas Price; Ph.B., Denison, 1916; A.M., Chicago, 1922. The Influence of the American Missionary Movement on American Diplomacy in China. *Harvard.*

Helen Louise Reid; A.B., Vassar, 1922; A.M., Radcliffe, 1924. International Servitudes. *Radcliffe.*

* *Fred L. Schuman;* Ph.B., Chicago, 1924. American Policy toward Russia, 1917–1927. *Chicago.*

* *Leon F. Sensabaugh;* A.B., Vanderbilt, 1925. Latin-American Disputes Submitted to European Arbitration. *Johns Hopkins.*

John F. Shreiner; A.B., Oberlin, 1917; A.M., Williams, 1922. International Regulation of Commerce, Industry, and Finance. *Wisconsin.*

William H. Snyder; A.B., Ursinus, 1923; A.M., New York University, 1924. American Investment in the Non-Contiguous Countries of the Caribbean and the Impetus Given it by the Recent International

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Relations of the United States and that Area. *New York University.*

A. Solansky; Charles University, Prague, 1912; A.M., Columbia, 1924. Military Occupation. *Columbia.*

R. C. Spencer; A.B., Colorado, 1923; A.M., *ibid.*, 1924. The Relationship between the Assembly and the Council of the League of Nations. *Illinois.*

Harold H. Sprout; A.B., Oberlin, 1923; A.M., *ibid.*, 1924. International Law and National Law. *Wisconsin.*

Robert C. Stevenson; A.B., Occidental, 1925., A.M., Columbia, 1926. Theories of War and Peace. *California.*

Ralph H. Steinson; A.B., Ohio State, 1921; A.M., Harvard, 1924. Control of the Manufacture of Armament. *Illinois.*

Thomas Leland Stock; A.B., Stanford, 1927. Membership in the League of Nations. *Stanford.*

Ivan M. Stone; A.B., Nebraska, 1923; A.M., Illinois, 1926. The Relations of Petroleum to American Foreign Policy. *Illinois.*

* *S. H. Tan;* A.B., Shanghai College, China, 1922. American Investments in China. *Chicago.*

* *L. B. Tribolet;* A.B., Denison, 1920; International Aspects of Electrical Communications in the Pacific Area. *Johns Hopkins.*

* *Yi Hao Tseng;* A.B., Shanghai College, 1923; A.M., *ibid.*, 1925. American Influence upon Chinese Reform Movements. *Johns Hopkins.*

Clifton Utley; Ph.B., Chicago, 1926. Antecedents of Modern War. *Chicago.*

P. K. Walp; A.B., Virginia, 1925; A.M., *ibid.*, 1926. The Respective Functions and Powers of the Council and Assembly of the League of Nations. *Johns Hopkins.*

* *Hua Chang Wang;* A.B., Minnesota, 1924. Reparation for International Delinquencies. *Chicago.*

Shih-Fu Wang; A.B., Wisconsin, 1926; A.M., *ibid.*, 1926. Turkey in World Politics, 1914–1924. *Wisconsin.*

Payson Sibley Wild; A.B., Wisconsin, 1926; A.M., Harvard, 1927. Reprisals. *Harvard.*

Francis Graham Wilson; A.B., Texas, 1923; A.M., *ibid.*, 1924. The Organization and Policy of the International Labor Bureau under the League of Nations. *Stanford.*

Robert Renbert Wilson; A.B., Austin, 1918; A.M., Princeton, 1922. International Agreements for Obligatory Arbitration. *Harvard.*

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Katherine D. Wood; A.B., Wisconsin, 1924; A.M., *ibid.*, 1925. International Regulation of Emigration and Immigration. *Wisconsin.*

Han Too Wu; LL.B., Imperial University of Tokyo, 1925. Responsibility of States for Injuries Sustained by Aliens on Account of Acts of Immigrants. *Illinois.*

C. Walter Young; A.B., Northwestern, 1922; A.M., Minnesota, 1924. Japanese Policy and Administration in Manchuria. *Minnesota.*

GOVERNMENT AND SOCIAL PROBLEMS

Ruth Whitney Barrett; A.B., Radcliffe, 1923; A.M., California, 1924. The Administration of Labor Laws Protecting Women and Children in Massachusetts. *Radcliffe.*

* *Arthur Watson Bromage;* B.S., Wesleyan, 1925; A.M., Harvard, 1926. The Political Implications of Illiteracy. *Harvard.*

Duckso Chang; A.B., Waseda, Japan, 1916; A.M., Columbia, 1925. Methods of Promoting Industrial Peace in Great Britain. *Columbia.*

Harwood L. Childs; A.B., Dartmouth, 1919; A.M., *ibid.*, 1921. The American Federation of Labor and the Chamber of Commerce of the United States as Unofficial Agencies of Government. *Chicago.*

Harold R. Enslow; A.B., Kansas, 1926; A.M., Illinois, 1927. Import Taxes on Agricultural Products. *Pennsylvania.*

James W. Errant; B.S., Illinois, 1923. Public Employee Organizations in Chicago. *Chicago.*

George Fouts; A.B., Texas, 1926. Gorgales; an Analysis of a Political Community. *Chicago.*

* *John J. George;* A.B., Washington and Lee, 1920; A.M., Chicago, 1922. Motor Carrier Regulations in the United States. *Michigan.*

Carl Green; A.B., Eastern Illinois State Teachers' College, 1924; A.M., Illinois, 1925. School Legislation in Illinois and its Interpretation by the Courts. *Illinois.*

Reuel G. Hemdahl; A.B., Augustana, 1925. Scandinavians in the Party System of Illinois and the Northwest. *Chicago.*

* *E. Pendleton Herring;* A.B., Johns Hopkins, 1925. The Representation of Organized Groups before Congress. *Johns Hopkins.*

Raymond Leydig; A.B., Kansas, 1925; A.M., Columbia, 1928. The American Farm Bureau Federation—a Pressure Group. *Columbia.*

Edward M. Martin; A.B., Oberlin, 1916. The Rôle of the Chicago Bar Association in Judicial Elections. *Chicago.*

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Charles P. O'Donnell; A.B., DePaul, 1926. Catholic Participation in Politics. *Chicago.*

Robert F. Steadman; B.S., Dakota Wesleyan, 1923. Organization and Functioning of Public Health Agencies in the Regional Area of Chicago. *Chicago.*

William M. Strachan; A.B., Michigan, 1912; LL.B., *ibid.*, 1915; A.M., *ibid.*, 1923. Radio Communication: a Problem in Domestic and International Jurisdiction and Legislation. *Michigan.*

Bradford W. West; A.B., Amherst, 1923; A.M., California, 1925. Major Financial Problems in the Public Care of the Insane; a Study in Public Finance. *Pennsylvania.*

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BOOK REVIEWS

EDITED BY A. C. HANFORD

Harvard University

The Republican Party. By WILLIAM STARR MYERS. (New York: The Century Co. 1928. Pp. xii, 487.)

The Democratic Party. By FRANK R. KENT. (New York: The Century Co. 1928. Pp. xii, 568.)

These two companion volumes cover much the same ground, use much the same data, present much the same personalities, tell much the same general story, yet from radically different points of view and to the end of radically different conclusions. The style and method are also radically different, though both are distinctly "popular." Mr. Kent undertakes a narrative covering 136 years "as a reporter rather than as a historian," with the purpose not of glorifying his party but of telling the truth about it (p. vi)—only to produce a history that is also a eulogy. Of his journalistic abilities there is no lack of evidence. His style is vivid, graphic, absorbing, and often gripping, his thrilling description of the 1912 Baltimore convention being journalism at its best. He gets down to his subject at once, quite in contrast with Professor Myers' long introduction on the character of American parties and party life. Yet his enthusiasm easily runs away with itself and he appears to forget earlier individual characterizations in later sweeping generalizations, as when he says that "Polk, Pierce, and Buchanan did not qualify as great presidents" (p. 182), and then later speaks of "the Democratic party with its long line of fine presidents" (p. 183). There are too many evidences of hasty or careless workmanship, and it is doubtful whether even the reporter's refuge is adequate for the use of such expressions as, "which is certainly saying an awful lot" (p. 52), "the idea does not click" (p. 110), "it at once ditched the Van Buren chances—from that moment he was sunk" (p. 138), and for referring to President Pierce's cabinet as "fairly efficient fellows" (p. 173).

It is no more necessary for Dr. Myers to inform the reader that he writes as a college professor than for Mr. Kent to explain his professional connections. With methodical precision he gives to each national convention and election exactly the same treatment and includes innumerable details that make this volume more complete as

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a general history and more useful to the student of politics but far less interesting for the general reader. It is of no great significance that in the convention of 1872 Senator Morton was seated while he spoke, nor startlingly unusual that three colored delegates were loudly cheered or that the hall was lighted by gas and thereby made hot and the air close (p. 199). Further, the narrative is frequently interrupted and lost in rather long quotations from source materials and some materials that cannot be classed as sources. Footnote references are as abundant in this volume as they are lacking in the Kent volume.

Mr. Kent's work is much more a party narrative and less an American history than Dr. Myers' work, though the latter improves materially in this respect from McKinley's administration to the conclusion of the book. Dr. Myers devotes 120 pages to the period preceding Lincoln's first inaugural—a lack of proportion, it would seem. Mr. Kent more freely interjects his own personal comment, observations, and conclusions. In general treatment he differs from Professor Myers' methodical procedure in conceiving that the "real story of the Democratic party is the story of the five or six genuinely great men who stand out in its history," and he "drapes" the party history largely around the "towering party personalities" of Jefferson, Jackson, Cleveland, Bryan, and Wilson. The character studies are vividly and honestly drawn.

The two volumes may rightly be regarded as supplementing each other, yet the reader is often perplexed in forming his judgments from them. "Personal liberty" is held by Mr. Kent to be a fundamental principle of his party, yet Mr. Myers asserts that this was "snatched away . . . . by the Republicans of seventy years ago" (p. 12). Mr. Kent insists that the Democrats have always been more willing than the Republicans to grapple with a controversial question on the basis of traditional principles, whereas Mr. Myers quotes approvingly that "it may well be questioned whether as a party it [the Democratic] has any fixed and abiding convictions" (p. 278). Concerning President Polk there is direct contradiction. Says Myers, "Polk . . . . was keen enough to appreciate the possibilities of the office of president. He dominated and led the Democratic party . . . . in a way that was a decided reminiscence of Andrew Jackson and an anticipation of Woodrow Wilson" (p. 18); says Kent, "it is hard to conceive of Mr. Polk . . . . as either a great man, a great president, or a great party leader" (p. 149).

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Both books are professedly non-partisan and doubtless are as fair and impartial as party histories are likely to be, but they are not objective studies; and that each man is writing the narrative of his own party is clearly obvious. Mr. Kent describes his party as one "that through five generations has produced more interesting and influential figures than all the others combined" (p. 3) and glories in the "indisputable greatness of the basic Democratic principles . . . . and essential soundness of the historic Democratic doctrines" (p. 4). Professor Myers, in commenting upon the Hayes-Tilden election, quite unwisely charges, without proof, that "the Democrats have too many skeletons in their own family closet to be unwary in their bandying of charges" (p. 228), and then even more unwisely suggests a comparison of conditions in 1876 and 1926. If Mr. Kent is intemperate in lauding his party heroes, Mr. Myers is even more addicted to extravagances, as in his well-nigh reverence for Roosevelt and bitter prejudice against Wilson.

Mr. Kent ventures far from the field of the historian into the realm of prophecy. He is sanguine of the future of his party. There is a "vital spark" in it "that cannot be extinguished," and even though at present it be "issueless and leaderless" it is still full of energy, vigor, and promise. It is "the party of the people—a party that represents one of the great natural views of government," he believes, as it carries on under the slogan given it by Jefferson, "Equal rights for all, special privileges for none" (p. 41). It is strongest when it maintains its fundamental principles on economic issues, states' rights questions, and personal liberty controversies; weakest when it deserts them. Handicapped by predominant Republican control of the channels of publicity, by the popular belief that prosperity attends only Republican administrations, by sectional splits and lack of unity on fundamental issues, the party will nevertheless eventually, and perhaps soon, Mr. Kent believes, rise out of the minority position to which the Bryan domination consigned it. Professor Myers holds more closely to the historian's province of recording the past without venturing into the uncertainties of the future.

HAROLD R. BRUCE.

Dartmouth College.

Primary Elections. By CHARLES E. MERRIAM AND LOUISE OVERACKER. (Chicago: The University of Chicago Press. 1928. Pp. xi, 448.)

In a large measure, this is a revision of Professor Merriam's well-

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known *Primary Elections* of 1909; it is written "in order to present an analysis of recent changes, an interpretation of the nominating process in the light of new tendencies, and some suggestions for a constructive program of nominating development."

The first three chapters of the former study, recounting the early history of the movement to regulate primaries by law, appear without modification in the present volume. The next three chapters, "Regulation of the Convention System," "Direct Primary Legislation," and "Judicial Interpretation of Primary Laws," have been thoroughly revised to date. A new chapter on "Presidential Primaries"—in the main an excellent compression of Miss Overacker's recent book on the subject—has been added, as well as another short chapter on "The Analysis of Primary Forces," which will serve for the inquiring but doubtful and hesitant primary voter much the same purpose as the museum guide serves for the lay visitor in the art gallery. Two chapters are devoted to the practical working of the primary and two to summary and conclusions (pp. 208–358).

Four well-prepared and valuable appendices, largely the work of Dr. Luella Gettys, complete the volume. One is a list of the cases involving primary legislation; another, a summary and digest of existing primary laws; another, a chronological citation of such legislation from 1866 to date, a glance at which reveals the sweep, volume, and mutability of this type of legislation; the fourth, an extensive, and for recent years quite exhaustive, bibliography, with sources of statistical material for primary and general election returns.

Two or three general observations may be made. First, as the title indicates, not the direct primary only, but primary elections, constitutes the subject matter. In the fore part of the final chapter, convention problems are presented under several headings—the district gerrymander, indirect election of delegates, instruction of delegates, and platform preparation. Second, the book does not purport to be definitive but rather tentative. The authors recognize in proportional representation, nomination by petition, and so-called non-partisan forms, competing methods of choice which they prefer to partisan primaries, direct or indirect, for local elections. They admit that the repeal of all primary regulations is thinkable, and that a new form of executive leadership may arise with the effect of reducing the importance of parties. Third, informed by practical experience in many a campaign and by years of intent inspection of party processes, Professor Merriam explores with keen insight the meaning and

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effects of regulation and the reactions of individuals and factions. "The level of politics is in the long run the level of intelligent interest in men and affairs political. Under any system the largest and most skillful group of interested and active citizens will determine public policies and will select the persons to formulate and administer them (p. 352)."

The pre-primary slate, the pre-primary convention, the non-partisan primary, woman suffrage, and the modern art of advertising and publicity are discussed as unforeseen tendencies which have affected the operation of the direct primary and rendered more difficult a calculation of its utility. To every complaint filed against the direct primary, the authors respond, "No bill;" or rather, assuming a prima facie case to have been made out, the verdict upon every count of the indictment is for the defense upon a greater or lesser preponderance of the evidence. "In short, of all the arguments against the direct nominating system, the charge that it destroys or tends to destroy the party system and party responsibility is the least tenable. . . . ."

In an evaluation of the alleged merits and defects of the direct primary, there are examined the questions of expense, of the effect upon machines and bosses, of the importance of the primary in one-party governmental areas, of party membership tests, of the percentage of the total vote required for nomination, and of the relation of the primary to blocs. In order to furnish any nominating system a fair chance to function effectively, the simplification of government and a reduction in the number of elective offices are considered necessary, as well as a return to the original form of the Australian ballot, an extension and enforcement of the merit system, an elevation of the level of administration and leadership, and the further political education of the electorate to substitute an attitude of discrimination for one of traditionalism and suspicion.

Little attempt is made to analyze the causes of the widespread, although almost universally unsuccessful, attack upon the direct primary during the last ten years, and with one or two exceptions the constructive proposals are of a limited nature, hardly touching the main features of the primary. The idea of party conferences is set forth at length as a voluntary means of developing leadership and responsibility. A challenge is issued: "If a party cannot confer on its common problems, what is wrong with it? Why does it differ in this respect from all other types of modern social organization, com-

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mercial and cultural alike?" It may be a partial answer that no other organization has its membership controlled, not by itself, but by law. At all events, any expectation that parties will soon take themselves in hand to correct their faults ill comports with the suggestion that "it may become necessary to restrict the length of demonstrations to, say, fifteen minutes unless an agreement upon the division of time can be amicably reached; or even upon the type of noise-makers and the total volume of sound permitted, in relation, of course, to the cubage and acoustics of the place of assembly (p. 326)."

In a penetrating analysis of the problem of candidate expense, the advanced but apparently sound position is taken that such expense is quite as much a public question, and in effect incurred as much in the public interest, as are other costs of the primary which have been assumed by the state.

If by the statement that "in counties party government does not effectively function" is meant merely that parties are about to "abdicate responsible leadership" here, as it is said they have done in cities, there seems to be a mite of inconsistency with the assertion that half the counties of the United States are one-party counties in which nominations are equivalent to elections. Municipal reformers of a generation ago may not agree that "in urban elections the national party system was never strong in the United States" (p. 216). Perhaps too positive a statement is this: "In practice party lines are almost wiped out in most city elections," as is more or less conceded on the same page with the admission that "the national parties will and do exercise great and sometimes dominating influence in local choices. . . . ." (p. 295).

There seem to be only very few misstatements of fact. On pages 58, 76, and 342 it is stated that ten per cent of the pre-primary convention vote in Colorado is sufficient to secure a candidate a place on the ballot, but on page 216 the present requirement of twenty per cent is correctly given. County officers are said to be nominated by non-partisan primary in "California, Minnesota, and North Carolina," when probably North Dakota is meant. Nebraska should be included among the states (p. 92) in which proposals to nominate all state officers on a non-partisan ballot have been defeated at referendum elections, as it is on page 348. The statement on page 100 that in every one of the central states except North Dakota attempts have been made to repeal the direct primary hardly harmonizes with the inclusion of North Dakota among the states in which popular referenda have

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sustained the primary (p. 271). On page 340 the impression is given that Michigan and South Dakota, as well as Iowa, resort to convention nominations in case no candidate receives a certain percentage of the primary vote. Ambiguous or awkward expressions occur on pages 319, 320, 321, due probably to slips by the printer and oversight in proof-reading. "Thusly" creeps in on page 92.

On the whole, this is a timely work and well-executed. It is more than a study of primary elections; running through the discussion are thought-provoking comments upon and fundamental examinations of the operation, function, and control of the agencies for forming and formulating opinion and selecting political leaders in a democratically organized government. The style is clear and readable.

RALPH S. BOOTS.

University of Pittsburgh.

The Speaker of the House of Representatives since 1896. BY CHANG-WEI CHIU. (New York: Columbia University Press. 1928. Pp. 347.)

This treatise is a penetrating examination of what Professor A. B. Hart has termed "actual government." By means of a careful analysis of relevant statistics, congressional debates, Hind's *Precedents*, newspaper extracts, magazine articles, and biographical and autobiographical sketches, the author has succeeded in presenting a lively and accurate understanding of the Speaker of the House of Representatives since 1896. It will be recalled that Miss M. P. Follett made a study of this office before that date.

Naturally, a study of the Speaker since 1896 is divisible into two parts. First is the period between 1896 and 1910. Second is the period since the "revolution" of 1910–11. From 1896 to 1910 the Speaker occupied a very important, although not czar-like, position in the House. His control over committees, his dominance over the committee on rules as chairman, his extensive powers as a presiding officer almost made him a premier over the legislative program. Furthermore, the qualities of leadership possessed by men of the caliber of Reed and Cannon had the effect of concentrating considerable influence in the hands of Mr. Speaker.

Mr. Chiu's belief is that since the "revolution" the Speaker has retained much, if not all, of his political prestige. In depriving the Speaker of the chairmanship of the committee on rules and of the power to select the chairmen of the various committees, the House, however, succeeded in reducing the conspicuous position as presiding

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officer which he formerly enjoyed. These latter changes, let it be noted, were more nominal than real. The Speaker is still a political factor to be reckoned with. In the first place, the fact must never be forgotten that the Speaker is a member of the House, and that he is an agent for his constituency, dedicated to the task of obtaining for his congressional district as many legislative favors as possible. Through his intimate knowledge of parliamentary practice, his wide information about the legislative situation in the House, his right to debate and to vote on all measures, and his often determining influence in the caucus, the Speaker wields an astonishing amount of influence in turning appropriations toward his constituency. Second, the office of Speaker has been conspicuously successful in attracting leaders. To be an effective Speaker, it is highly necessary not only that one should be a skillful parliamentarian, but that one should possess the prowess to induce an unwieldly body like the House to follow his persuasions and admonitions. The Speakers since 1896 have been forceful and astute men. Thirdly, the House of Representatives, in common with other representative assemblies, has been deluged with a mass of legislative inventions designed to deal with the complexities of an industrial age. Mr. Chiu deftly shows how the ingeniously contrived rules of procedure, the growth of the influence of the steering committee, the constantly increasing importance of committee action, and the extensive powers of the majority floor leader are frequently of little avail in cutting the Gordian knot of a legislative jam. The situation has demanded and has brought forth rulings of the Speaker which have had the effect at once of enhancing his power and prestige and of enabling the House to turn its attention to important legislative projects. Fourth, "the Speaker and party leaders know what measure or measures will come before the House for consideration, who will debate for or against the measure, and usually the point of order to be raised on the floor of the House. The whole proceeding is really what is called a dress rehearsal at which members of the House recite their respective parts to the constituents in Buncombe. This condition is possible only through the Speaker's control of recognition."

Mr. Chiu contends that in a number of respects the power of the Speaker has diminished since 1910. This reduction has followed in part from depriving the Speaker of his control over committees, including that on rules, and in part from certain limitations upon him resulting from the organization of the House and from the develop-

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ment of the position of the floor leader and the steering committee. First, the chairman of a committee, especially an important committee, has power to control legislation in that he is an influential leader. Furthermore, "the House is a club of shrewd politicians." The Speaker is able to exercise power only to the degree that he is willing to accommodate the political interests of his fellow congressmen. In addition, "leadership," to use the words of Mr. Luce, "is in commission," consisting, since 1911, of the Speaker, the floor leader, the chairmen of the committee on rules, the committee on appropriations, and the committee on ways and means, and the members of the steering committee. In determining the legislative program of the House, the Speaker is merely one of the more important members of this "commission." Since 1911 the Speaker has not had power to select the floor leader. Especially during the speakership of Mr. Gillett, the floor leader developed into a controlling force. At that time Mr. Mondell was the floor leader. Members found that they were unable to obtain recognition from the Speaker without obtaining Mr. Mondell's consent beforehand.

In spite of the fact that Mr. Chiu is a foreigner, this study is written in clear English and occasionally with grace. Readers will experience some difficulty in following the narrative, in view of the confusing use of the past tense and the historical present interchangeably with the present tense. The lack of an index deprives the book of mechanical convenience. Altogether, Mr. Chiu has a happy faculty of piercing beneath the formalities and the obvious features of the Speakership and of explaining the actual power, influence, and position of this significant office in our political system.

GEDDES W. RUTHERFORD.

Iowa State College.

China: A Nation in Evolution. By PAUL MONROE. (New York: Macmillan Co. 1928. Pp. xv, 447.)

China and the Nations. By WONG CHING-WAI. Rendered in English and Edited with an Introduction, Explanatory Footnotes, and a Map by I-SEN TENG AND JOHN NIND SMITH. (New York: Frederick A. Stokes Co. 1927. Pp. xxiv, 141.)

Modern Democracy in China. By MINGCHIEN JOSHUA BAU. (Shanghai: The Commercial Press, Ltd. 1927. Pp. x, 467.)

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Contemporary Thought of Japan and China. By KYOSON TSUCHIDA. (New York: Alfred A. Knopf. 1927. Pp. 240.)

Selected Articles on China Yesterday and Today. Compiled by JULIA E. JOHNSEN. With an Introduction by DR. PING WEN KUO. (New York: The H. W. Wilson Co. 1928. Pp. lxxviii, 362.)

If the English-reading world is ignorant concerning China's domestic situation and international relations, such ignorance cannot be attributed to a dearth of publicity. For better or for worse, no country has received more advertising during the present century than China. The itinerant scholar, on special commission or sabbatical leave, the ambitious seeker of a higher degree, Chinese and non-Chinese, with or without first-hand knowledge of the country, the internationally-minded philosopher seeking new grist for his mill of comparison, the missionary, in the field or on furlough, cultivating his clientele, the active-minded propagandist of nationalism or of continued special rights and privileges in China, the personally (if not always safely) conducted tourist—all demonstrate that in the composition of books on China there is no hesitation and but little reticence. If publicity and special pleading could save a nation, surely China had been saved ere this.

Of the books under review, that by Professor Monroe gives the most complete bird's-eye view of the situation as it existed in China in the year 1927. The main drawback to such a view is that one sees the superstructure but little or nothing of the foundations. The reader of this volume should, however, acquaint himself at the outset with the object of the writer: "This volume is not for the specialist, or for those familiar with China; but for the average American puzzled by the complexity of the problem . . . . yet earnestly desirous of understanding." Professor Monroe avows "a sympathetic attitude toward the aspirations and claims of the Chinese and an admiration for their achievements and their sterling qualities." He is more modest than the Englishman who prefaced his study of the Chinese Republic with the remark, "This volume tells everything that the student or the casual reader needs to know about the Chinese question." The more valuable part of the volume is the first half, although it is clear that the writer enjoyed himself vastly more in the second. The chapters on the institutions, the social background, and the philosophy and religions of China are excellent; that on the Republic is clear and dispassionate. But when Professor Monroe discusses the relations of the foreign

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nations with China, and the claims of the more advanced of the Nationalists, he finds difficulty both in maintaining his balance and in being historically accurate. Sympathy is a better guide for the partisan than for the historian; if the "average American" is to consider the Chinese problem he would better follow the latter than the former.

Dr. Monroe's ability to compress is notable, but it sometimes leads him astray, e.g. (p. 133), Great Britain's second envoy to Peking was Lord Amherst, not Lord Elgin, and Lord Amherst was sent in 1816, not in 1813. Usage does not make it accurate to refer to the first Anglo-Chinese War as the "Opium War." On some quite debatable matters the author has no apparent doubt, as witness his reference (p. 253) to "the indefensible war of 1860, or the even less defensible punitive destruction of the Winter Palace [in point of fact, the Yuen Ming Yuen was the Summer Palace, not the Winter Palace] which followed." One does not have to uphold either the policy or the actions, as a whole, of the English and the French in 1860 to call attention to the fact that there were two sides to the problems involved in the struggles mentioned. Perhaps the most serious criticism to be made of the latter half of this study is the failure to present the foreign, or non-Chinese, claims along with those of the Chinese. Professor Monroe finds no apparent difficulty in summarizing and evaluating—in thirty-two pages—the history, policy, and problems (including that of education) of Christianity in China during the past thirteen centuries. Only one who has first-hand knowledge of a few of the complexities of this educational problem can accurately gauge the value of the criticism and the solution so simply and casually offered.

For those who desire a survey of China's international relations from the viewpoint of the extreme left, nothing better than Mr. Wong Ching-Wai's draft of a report on this subject can be expected. Mr. Wong is the sometime "chairman of the Governing Committee of the People's Government of China." Since springing into notoriety some nineteen years ago on the occasion of his attempted assassination of the Manchu prince regent, Mr. Wong has devoted his time to revolutionary activities in China and abroad. On account of his pro-Bolshevist relations in 1927, he was again forced into exile. *China and the Nations* was prepared by Mr. Wong for the International Problems Committee of the People's Conference of Delegates at Peking in April, 1925. Professor Monroe characterizes Mr. Wong's report mildly:

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"Far more virulent in spirit (than Dr. Sun's *The International Development of China*), it breathes only hostility to foreigners (except the Russians), recognizes no disinterestedness in the policy of any people except the Russians, and maintains a most uncompromising spirit of criticism and of irreconcilability throughout." Truth and historical accuracy embarrassed Mr. Wong in composing his report no more than they do the composers of party platforms in the United States of America in the perfect days of June. When facts and party or revolutionary theory come into conflict one may be perfectly certain as to the victor. Exactly because this book is what it is, no student of Far Eastern affairs can afford to overlook it. A bibliography listing eight works described as "recognized as of the highest authority" contributes an element of unconscious humor, not on account of its briefness, but because a study of the works listed would demonstrate that the "spirit of truth" was far away when about three-fourths of the statements in the report itself were written.

Of quite a different type from the preceding volume is Dr. Bau's *Modern Democracy in China*. For his writings in the field of government and international relations Dr. Bau is well known in China and the United States. While thoroughly patriotic and anxious to see his country take a worthy place in the family of nations, his approach is that of a liberal republican rather than that of a revolutionist. He radiates light rather than heat in his discussion of the problem of government in China. The first part of his work is an interesting survey and analysis of the first decade of the Chinese Republic, 1912–22, and has historical value. The second part is given over to a general discussion of the elements and principles of political science and is not as valuable to American readers as the first section, although of more value to the Chinese student. The volume was first published in 1923, and was reviewed shortly thereafter by the undersigned, who pointed out that (pp. 153, 160) Viscount Bryce, and not a non-existent "Boyce," should be credited with *Modern Democracies*; also that Switzerland (p. 153) was misspelled. To find these errors in a reprint five years later gives one the feeling of meeting an old friend; in fact the only internal difference between the earlier and later editions is the change of date on the title page. The paper and the binding of the later edition are, however, considerably better.

While a valuable contribution to the body of knowledge in the West concerning contemporaneous developments in the philosophical thinking of Japan since 1868, there is, comparatively speaking, little

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of interest or value to the student of government and political thinking in Mr. Kyoson Tsuchida's work. Of the twelve chapters, only two are devoted to China, which on a quantitative basis is scarcely fair to the philosophers of the Middle Kingdom, especially when one takes into account Mr. Tsuchida's statement (p. 190) that "Chinese thinking, unlike Japanese, can boast a great and long tradition." To be sure, this study deals with contemporary thought rather than with the thought of the past; but, even so, it is doubtful whether the thought of modern Japan is six times as great in quantity or value as that of modern China. The development in Japan of neo-Kantianism and neo-Hegelianism is traced in considerable detail, and the debt of leading Japanese thinkers to Europeans and Americans is gracefully acknowledged. A few of the results of modern industrialization upon Japanese life and thought are discussed from a philosophical point of view. Kang Yu-wei, Liang Ch'i-yueh, Ku Hung-ming, and Hu Shih are nodded to.

The most modest of the works here discussed and, on the whole, the most valuable is Miss Johnsen's *Selected Articles on China Yesterday and Today*. This is not in spite of, but because of, the fact that it is a compilation, and because it has a really valuable classified bibliography. China is quite too big, and the factors far too numerous and complex, to be presented intelligently and fairly by any one mind. It would be difficult to name another volume of equal size in which as much information on present-day China is contained and in which the divergent viewpoints—Chinese and non-Chinese—are as fairly presented. The material and the bibliography are arranged under three headings: China—the Background, China Today, and International Relations. The last-named section is sub-divided into General Discussion, Discussion in Favor of China, and Discussion against China. Among the authorities quoted are F. L. Hawks Pott, Charles Keyser Edmunds, Ku Hung-ming, Julean Arnold, T. Z. Koo, Hu Shih, V. K. Wellington Koo, E. T. Williams, Stanley K. Hornbeck, S. K. Alfred Sze, William J. Hail, and Henry Kittredge Norton. It is to be regretted that the compiler should have taken over the title of Professor E. T. Williams' valuable work. This, however, does not detract from the intrinsic value of a compilation well worth adding to any collection of works dealing with the Far East.

HARLEY FARNSWORTH MACNAIR.

University of Chicago.

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Latin America and World Politics. By J. Fred Rippy. (New York: Alfred A. Knopf. 1928. Pp. 286.)

South America Looks at the United States. By Clarence H. Haring. (New York: Macmillan Company. 1928. Pp. 243.)

Adventures in American Diplomacy, 1896–1906. By Alfred L. P. Dennis. (New York: E. P. Dutton and Company. 1928. Pp. xii, 537.)

These three volumes are among the rapidly accumulating evidences of the increasing interest of the American people in their relations with other countries. All have the good qualities and the defects of a semi-popular appeal. All three authors seem to be striving, though perhaps only half-consciously, to cater to an interest which they think should be more intense than it is. As a result, we have three extremely readable books on American diplomacy.

Professor Rippy's volume, instead of following the usual practice of considering Latin America as a sort of awkward and unwieldy caudal appendage to the United States, treats it as a factor in world politics. The book is built around the interesting thesis that Latin America, ever since it became evident that its vast territories were to fall from the failing hands of Spain and Portugal, has been the object of rivalry among the European empires. President Monroe and his successors who have upheld his famous Doctrine put an end to the cruder methods of European imperialism, but, if Professor Rippy is correct, imperialism in its subtler forms, such as economic penetration and financial domination, has continued down to the present day. In the later phases of this contest the United States has been as active and as effective as any European empire. The evidence for the first half of the last century is plentiful and well known. Professor Rippy gives us a succinct and well-balanced account of the rivalry between Great Britain and the United States over Argentina, Cuba, Mexico, and Texas. He marshals his evidence for the later period in a manner which makes his thesis convincing if not conclusive.

Even if this view is not an all-embracing and final interpretation, it should have a salutary effect. With our highly developed egocentricity we too frequently look upon any misunderstanding with Latin American countries as concerning only ourselves and them. The natural result is an over-indulgence in self-criticism whenever we assert our rights or insist upon our policies. Some of us are prone to see such action by the United States as bullying and domineering. In

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the wider view which Professor Rippy gives us, there is less room for this sort of criticism. The Monroe Doctrine loses its one-sided appearance as a purely American affair and assumes its proper proportions in the larger field of world politics. The policies of the United States appear in their real significance as related to the policies of European countries instead of as unwarranted interference in the affairs of weaker neighbors.

One has a feeling of regret that in a work of such high quality and balanced judgment the author should permit himself occasional denunciations of American actions in terms suggestive of the most irresponsible radical journalism. A minor criticism may be directed at his practice of inserting in quoted passages words which change the direct into indirect quotation. Either form alone would be quite acceptable, but the two together are confusing.

Professor Haring, approaching the same field from another angle, contributes a most illuminating analysis of Latin American opinion of the United States. While avoiding the less measured tone of criticism of Professor Rippy on American policy, he permits himself an occasional fling by way of flourish at the end of a chapter. The main trend of his survey, however, goes far to support Professor Rippy's implication of European countries in the Latin American problem. Professor Haring has stated the elements of this problem in relation to the ideal of Pan-Americanism in a manner which can hardly be bettered: "An appreciation of the desirability of close relations, economic and cultural, with the northern republic, into whose orbit they are drawn whether they will or no; a desire for financial assistance, yet a half-concealed fear that American loans and industrial investment will be followed by political influence and pressure, endangering their national independence; foreign, European interests, jealous of American hegemony in the Western hemisphere, and ambitious to supplant it by an international grouping which may serve the political and economic purposes of certain Latin states in Europe; lack of mutual understanding due to ignorance or provincialism, to paucity of intercommunications, or to misrepresentation by irresponsible journalists; such are the problems to be solved or conditions to be combatted in all countries of Latin America if a genuine Pan-America is to be achieved."

The greatest divergence between these two authors is in regard to Mexico. Professor Rippy is inclined to look upon Mexico as an abused innocent. Professor Haring relates with some detail the widespread

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Mexican activities directed against the United States. He shows how Mexican diplomacy has been unceasingly active in its efforts to increase Latin-American hostility toward this country and to form a Latin-American entente directed against us. There has probably been some soft-pedalling in this regard, but in the highly unstable state of affairs in Mexico there is no assurance that the attack may not be renewed at any time.

The absence of an index to Professor Haring's book is regrettable, though this is a matter for which the publisher is probably more to blame than the author.

Adventures in American Diplomacy will have a much wider appeal than Professor Dennis' work on Soviet foreign policy. The form of presentation in the new volume has much to commend it. The story of each "adventure" is told in a style calculated to interest even the lay reader. The absence of the lengthy foot-notes and unending quotations so common in works on diplomacy is a pleasant relief. Yet at the end of each chapter are citations in sufficient amplitude to satisfy the most exacting student. Following these are chapter appendices in which the important documents not elsewhere available are printed in full. The division of the discussion into twenty topics makes it somewhat difficult to see the picture of the decade as a whole. Yet it has the merit of clarifying the specific issues in a degree which would not be possible in a continuous narrative.

It is doubtful if even the decade of the World War and its aftermath can hold greater interest for the student of American diplomacy than that which Professor Dennis covers in this book. Surely no other decade since the early days of the Republic can approach it in interest. For it includes the years in which the United States first began to feel its responsibility as a world power, first began to play the important rôle in world politics which it is destined to play for many decades to come.

And Professor Dennis does it full justice. We see the hesitant and sometimes blundering efforts of McKinley and his colorless secretaries of state give way to the intelligent and confident diplomacy of John Hay and to the joyous, though sometimes equally blundering, activities of Theodore Roosevelt. Issues crowded hard upon each other. All but two or three of the chapters describe major diplomatic efforts. South America and the Monroe Doctrine, the British Empire in Europe, the Pacific and China vie with the Canal, Russia, Hawaii, and Morocco for a place in the picture. They were strenuous days in

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which American diplomacy was preparing itself all too hurriedly for the greater strain which began in 1914. Professor Dennis cannot be too highly commended for the diligence with which he has searched the private papers of Hay, Olney, and Roosevelt for new light on these times. His fairness of presentation and balanced judgment are equally commendable. It will be long before this book is supplanted as an aid to teachers and students of American diplomacy.

HENRY KITTREDGE NORTON.

Irvington-on-Hudson, N. Y.

Responsible Government in the Dominions. By ARTHUR BERRIEDALE KEITH. (New York: Oxford University Press. 1928. Two volumes. Pp. lxiv, xxvi, 1339.)

Great Britain and the Dominions: Lectures on the Harris Foundation, 1927. (Chicago: University of Chicago Press. 1928. Pp. 511.)

This is officially the second edition of a famous book; in reality it is the third. *Responsible Government in the Dominions* was first published in 1909. So successful was that single volume of modest dimensions that in 1912 it was enlarged to three, closely packed with valuable data on Dominion constitutional practice and theory. And now, fifteen years later, a second edition is made of the three volumes published in 1912.

The new edition is a decided improvement over the earlier one. It is some three hundred pages less in extent, yet conveys much more information. Nothing of value in the old edition has been omitted. On the other hand, all the significant and varied constitutional changes of the war and post-war period have been included. And this economy of space has been wisely secured by leaving to the Blue Books, where they properly belong, many speeches and debates.

It may safely be said in regard to this work that for all large libraries it is indispensable. There is nothing at present available which is comparable to Mr. Keith's book. Elsewhere we may find the constitutional history of the individual Dominions; but nowhere else, to the knowledge of this reviewer, may we discover such an exhaustive analysis of the powers and the status of royal governors, the working of the cabinet system in its many varied forms throughout the Empire, the legal theory and actual practice which characterize the upper and lower houses of Dominion parliaments.

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Mr. Keith's book is not easy reading. As was pointed out in the review of the first edition, his method of presentation might be more felicitous. He begins a typical chapter with a few brief introductory remarks, states his conclusions, and follows them by a great wealth of cases and quotations. Whereupon his chapters abruptly end. It would have been a happier method to leave the conclusions to the end, or at least to restate them. In so far as certain of his cases appear mutually contradictory, one believes that had this latter procedure been adopted the conclusions of the author would have been less dogmatically defined.

For Mr. Keith is over-dogmatic and at times given to a somewhat ultra-theoretical view in regard to many constitutional functions. A case in point may be found on pages 156–157, where he argues that "there is a vital distinction between the position of the king and the governor." To prove this, he adduces a wealth of illustrations. But since he is honest he also brings in evidence on the other side. This, according to his wont, he simply denies as valid. Mr. Harcourt, he states, "completely misunderstood" the functions of the governor. But Mr. Harcourt was secretary of state for the colonies. It seems to us that his *obita dicta* should carry weight. And although it may not be denied that in certain minor aspects the position of governor differs from that of the sovereign, we think it true that in the main their constitutional function is rapidly becoming identical.

It seems unfair, moreover, to write as did the former reviewer, the late Baron Korff, of "the overbearing tone of the author." Mr. Keith does not mince his words, and at times they are more vigorous than the occasion warrants; but his verbal blows are always downright, never sneering and indirect. It is not the harshness of his language, but the undue emphasis given to legalisms, with which we would quarrel.

The legal and constitutional expert, it seems to us, frequently falls short of being a good historian. He is over apt to emphasize the law and to underestimate popular trends and feelings which tend to set legal precedents to one side. I do not think it just to call Mr. Keith an imperialist, as did Baron Korff. His vigorous and somewhat prejudiced attack on the imperial federation movement puts him in an entirely different category. On the other hand, he does miss the Dominion point of view, which, as far as Canada is concerned, we may find better expressed in J. S. Ewart's *Kingdom Papers* and in J. W.

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Dafoe's lectures on Canada, which appear in *Great Britain and the Dominions*.

Mr. Keith is quite certain that the conference of 1926 did not put the Dominions on an equal status with the mother country, although it was expressly stated by the conference that they are. And to emphasize this fact the words were put in italics. Mr. Keith regards the use of italics as very unfortunate. We may agree with him that from a purely legal point of view this was unfortunate. But life is more than food and raiment; and politics is a deeper and more subtle thing than law and logic. This, Mr. Keith, like other legal experts, is not apt to see.

These criticisms, however, detract but slightly from the value of a great and learned work. That Mr. Keith's deductions do not always follow from his facts does not militate against the usefulness of the latter. The facts are here, by the thousand, in serried ranks and in orderly array. If the student of the Empire were to select for his reading but one book, *Responsible Government in the Dominions* should be his choice.

The University of Chicago is to be congratulated on the series of lectures delivered on the Harris Foundation and published under the title of *Great Britain and the Dominions*. As is inevitable when seven different men lecture on thirteen correlated topics, there is great disparity of treatment and much overlapping. But the surprising thing about this book is that there is not more.

The point of view of the majority of the writers is fortunately more analytical than descriptive. For the most part, statistics are left to their proper depository—the encyclopedia. The lectures are broad in scope, and taken as a whole they provide a convenient summary of Dominion problems.

The best in the series are those given by Mr. John W. Dafoe, of the *Manitoba Free Press*, on the problems of Canada. The writer, in this instance, seems somewhat more independent in his point of view than a number of the others, possibly because he is not a governmental official, associated with the maintenance of the status quo. Mr. Dafoe's analysis of the difficulties which confront the Maritime Provinces is particularly keen, his recognition of the uncertainty of future imperial coördination especially clear. The reader will find here perhaps the best brief exposition of Canadian nationalism to be met with anywhere.

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The seeming reluctance, on the other hand, of New Zealand to accept complete equality with the mother country in the matter of foreign relations, and the somewhat intermediate position taken by Australia between the Canadian and the New Zealand point of view are well brought out by the lecturers representing the Anzac Dominions.

WALTER PHELPS HALL.

Princeton University.

La Réforme de l'État en Belgique. By H. SPEYER. (Brussels: Établissements Émile Bruylant. 1927. Pp. 146.)

In this brief but comprehensive work, published under the auspices of the Institut de Sociologie Solvay, Professor Speyer has sought primarily to produce something of practical value to his country. In Belgium, as in all the countries of continental Europe, the parliamentary system of government is for the moment the subject of drastic criticism and violent attack. Professor Speyer defends the fundamentals of that system as it exists in his own country and at the same time proposes remedies for some of its incidental defects. In its home land this book has been recognized as timely. Its clarity, its moderation, and its constructive reality have made a serious impression on Belgian opinion. For us in America, it presents not only interesting sidelights on Belgian institutions, but, what is of much wider appeal, a liberal and scholarly European's reaction to the current criticism of parliamentarism.

The first chapter maintains the principle of popular majority rule as against the idea of the representation of interests. The author dwells impressively on the fact that the distribution of influence between "interests" must, in the very nature of things, be arbitrary. He points out that "the man of one interest exists only in the imagination of sociologists." He raises the very pertinent question, why, during thirty years of proportional representation, which opens the way certainly to any "interests" to put its representatives in the Chamber, no attempt of the sort has ever been made. And he caps his argument with a reference to the fact that in the elections of supplementary city councillors, half by the workers and half by the chiefs of industry, and of bodies like the *conseils de l'industrie et du travail* in which representation is based on "interests," party lines have been quite as rigorously drawn as in other elections.

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In the second chapter, the author takes up the general subject of the parliamentary system as compared with other methods of naming and controlling the executive. He spends a few pages on the presidential system of the United States. It is interesting to note that one of his principal reasons for rejecting our example is the position of authority in the Wilson administration occupied by a private citizen, Colonel House. Here is added evidence of the tremendous impression made abroad by the publication of the House papers. If it were not for the fact that the Colonel's position was as exceptional as it was anomalous, we might ourselves have grave reason for distrust of our constitutional system. Professor Speyer lays great stress on the success of the "parliamentary" states in the war as compared with the inability of their autocratic opponents to evolve effective leadership. To those who would retort that the Allies succeeded by the sacrifice of parliamentary principles through the devolution of dictatorial powers to individuals, he would reply that Lloyd George and Clemenceau were *par excellence* products of the parliamentary régime.

The third chapter is devoted largely to suggested reforms of parliamentary procedure in Belgium. Professor Speyer speaks here from experience as a former senator and a member of the *Conseil de Législation*. He recognizes that parliament "bends under its load." Theoretically he favors the abolition of the Senate and the creation of a series of special councils named by the Chamber and subordinate to it, for the careful preparation of all detailed technical legislation. He emphatically rejects, as relative failures, the French National Economic Council and the German Economic Council. In his opinion, the rescue of parliaments from legislative congestion must be through organs subordinate to them, not through independent authorities.

A change so radical being at present impossible, he suggests as immediate remedies a more habitual consultation of the *Conseil de Législation* on all legal questions; a parliamentary counsel to perfect the form of measures; the appearance before committees of the chambers of members of the administration; the prohibition of the reading of written *mémoires* in the course of debate; longer sittings of the chambers; limitation of the right to propose amendments after debate has begun; the more frequent presence in the chambers of departmental officials below the rank of minister; the devolution of subordinate powers of legislation to the administration. Each of these suggestions is accompanied by pertinent, sometimes amusing, illus-

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trations of present practice. In this portion of the book the student of Belgian government will find the ripe conclusions of a penetrating observer, exceptionally favored by his experience as a lawyer, legislator, and publicist. No one can read it without a better understanding of the Belgian parliament and a keener appreciation of the essential similarity of legislative problems the world over.

THOMAS H. REED.

University of Michigan.

Principles of Public Administration. BY W. F. WILLOUGHBY. (Baltimore: The Johns Hopkins Press. 1927. Pp. 720.)

A rapidly increasing body of material pertaining to public administration has heretofore offered no general work purporting to cover the entire field. Much already produced has, moreover, been of a legal, historical, or descriptive character, necessary as a ground-work to any field aspiring to scientific status, but of limited use to the active administrator and realistic-minded student eager to see *how* the thing should be done.

Mr. Willoughby has responded. With a work designed to show the essential problems involved in overhead administration, organization, personnel, *matériel*, and finance, he has coupled elaborate analysis and constructive suggestion. The broader phases occupy about one-third of the volume. They include the place of the legislature as a directing agency, the functions of the executive as a general manager, and the appropriate use of various types of bureaus as effective administrative controls. The wider problems of structure, as well as those concerning departmental organization, staff agencies, and field establishments are presented in six highly suggestive chapters which contain, perhaps, the best available material on the subject. A discussion of the position of revenue-producing enterprises, the organization and functions of advisory councils, and the use of administrative codes, service monographs, manuals, charts, reports, and official gazettes concludes the general treatment.

The remainder of the volume is in many ways an elaboration—a detailed discussion of factors intimately related to all administrative problems. Eleven chapters (some one hundred and seventy pages) treat the various phases of public personnel: basic principles, classification and standardization, training, recruitment, promotion, dismissal, retirement, and employees' organizations. Three chapters are

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given to the problems of *matérial* and supply, and a final part (well over one-third of the book) to finance. Here is extensive information relating to the formulation, authorization, and execution of the budget, as well as general consideration of the collection, custody, and disbursement of public funds, accounting, reporting, and the preparation of financial data.

The work is neither legal nor historical. In a formal way, it is hardly descriptive. Such delineation of administrative agencies as is necessary is often so interwoven with analysis as distinctly to subordinate it to the principle under discussion. Conflicting practices are presented, approved procedures are emphasized, and summaries are frequent. There is little attempt to introduce European comparisons. The methods of the American state are given subordinate emphasis, and municipal problems hardly more than occasional reference. It is American federal government that dominates the work. A critical bibliography is contained in some fifty pages of the appendix.

The book presents the principles of public administration as a single unit. It proceeds on the basis that while scientific precision in the extreme sense can hardly be premised in this field, a systematic treatment of certain fundamental principles is quite possible—principles that are at least sufficiently fixed to require their observance if the ends of efficient organization are to be served. While much that the work contains has appeared before (Mr. Willoughby has himself presented some of it in other forms), the systematic presentation, the suggestive topics for further detailed study, and the many constructive proposals have to a large degree broken new ground.

JOHN F. SLY.

Harvard University.

The Distribution of Power to Regulate Interstate Carriers between the Nation and the States. By GEORGE G. REYNOLDS. (New York: Columbia University Press. 1928. Pp. 434. Studies in History, Economics, and Public Law, No. 295.)

This volume deals clearly and accurately with the most important single aspect of interstate commerce, i.e., the regulation of interstate carriers. Following an introductory chapter on the constitutional grant of federal powers, the author analyzes the decisions of the United States Supreme Court into three chronological groups, 1789–1887, 1887–1920,

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1920–1927, with the Interstate Commerce Act of 1887 and the Transportation Act of 1920 as the lines of division. The cases decided at the 1927 term of the Supreme Court are included. The analysis of cases is followed by a helpful review of federal legislation regulating carriers engaged in interstate commerce, and of the manner in which such legislation has reduced the sphere of state action. The volume concludes with a critical chapter on "the present distribution of power and proposed changes."

In the discussion of cases the chronological division makes some difficulty for the reader, although he is usually able to follow the same topic through from one period to another. Yet the chronological arrangement is justified by the results, and in a new edition the reader's difficulty can be met by chapter subdivisions uniform for three of the chapters. The author refuses to indulge in technical refinements in order to distinguish and harmonize the authorities. The purpose of the volume is to show how and why national power has grown and the nature of present problems presented by such growth, not to harmonize decisions often incapable of reconciliation. Economic influences appear always to be in the author's mind, but are properly subordinated to the discussion of legal issues.

Only occasionally is there failure to consider some case that might have aided the discussion. United States v. Hill, 248 U. S. 420 (1919), would have been helpful in connection with federal legislation in aid of state prohibition; and Knickerbocker Ice Co. v. Stewart, 253 U. S. 149 (1920), would have aided in determining where the United States Supreme Court draws the line separating permissible congressional legislation in aid of state policy from a forbidden delegation of national power to the states. Terral v. Burke Construction Co., 257 U. S. 529 (1922), would have lent additional support to the author's discussion of unconstitutional conditions upon the doing of domestic business within a state. The author would also have found it useful to consult some of the articles in law journals discussing the problems of interstate carriers.

There is little to criticize in the author's presentation. He tends in places to use a time-worn phrase in a misleading manner, as when he speaks on page 339 of the "reserved power of the states to regulate interstate railroads for the protection of the safety of passengers and employees," although his discussion throughout the volume shows that he is fully aware that there are no reserved powers of states as against the authorized exercise of federal power.

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The author was probably deliberate in omitting any discussion of the judicial machinery through which carriers and their rates are largely controlled. It would perhaps require another volume to consider the remedies of carriers in state and federal courts; the attitude of the United States Supreme Court toward rate-making by the Interstate Commerce Commission; the struggle against control over state actions by federal courts as reflected in what is now Section 266 of the Federal Judicial Code; and the present criticism of Section 266 as inadequate. The relation of the courts to the rates of carriers forms an interesting story in itself; and the problem of distribution of power cannot be fully understood without reference to the fact that federal governmental action is subject to check by but one judicial system, whereas a person seeking relief from state action has a choice of either state or federal court.

The author's concluding chapter is of special value in showing the time now required to obtain a decision of the Interstate Commerce Commission, and in its discussion of the movement for devolution of authority through the use of state commissions as local agencies of the national government. Since the publication of Dr. Reynolds' volume a report has been submitted to the Interstate Commerce Commission formally recommending legislation under which the state commissions would be permitted to serve as federal agencies, subject to the supervision of the Interstate Commerce Commission, in the regulation of interstate motor transportation. (Interstate Commerce Commission. Docket No. 18,300. Motor Bus and Motor Truck Operation). This and earlier proposals of the same character bear out the author's view that centralization of control may go too far. The interstate motor vehicle problem is relatively new, but some federal action is becoming increasingly necessary. The problem of regulating interstate power transmission is important, but perhaps not yet urgent. An overburdened national agency with a crowded docket and delayed decisions must in some manner be adjusted to these new problems in which local interests are proportionately more important than in the heretofore major problem of the interstate railroad.

This volume makes a distinct contribution in its discussion of federal legislation and in its clear statement of present problems. It should prove of value both to the student and to the practicing lawyer. Should it appear in a new edition, the reviewer hopes that it may receive a less cumbersome title.

WALTER F. DODD.

Yale University Law School.

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Government and Business. By Earl Willis Crecraft. (New York: World Book Company. 1928. Pp. xi, 508.)

Until quite recently, treatises on the relation of government to business have been few in number. Excellent books by Professors Swenson, Ely, and Orth have dealt with various phases of the field. There have been several works on public-utility law and an occasional brief by some earnest advocate of less government in business. Dr. Crecraft's work possesses certain unique features. In the first half it presents the economic rôle of government, including the various services which national, state, and local authorities perform in this field and their influence on business. There are chapters on government activities in the fields of consumption, production, exchange, and distribution, and on the relation of public finance, the public service, political parties, legislation, and courts on one hand and business on the other.

In the second half of the work the view is reversed. The reader is placed on the standpoint of business and views government regulation of each of the more important business fields. There are chapters on transportation, communication, banking, insurance, marketing, brokerage, sales, labor, private monopolies on the one hand and government on the other. It is in this latter half that Dr. Crecraft makes his greatest contribution. He offers the most complete and accurate analysis of these business fields and the reasons for the regulation of each which has thus far been presented. This analysis shows a remarkable sympathy with the views and interests of business groups on the one side, with the consumer on the other, and with the general social viewpoint as a synthesizing influence.

The presentation of such an immense amount of material in highly condensed form has involved an amazing amount of reading in widely diversified fields. Such a review necessarily must be a general descriptive sketch rather than an intensive discussion of principles and policies. However, this latter need is not left unsatisfied.

Part five, consisting of four chapters, deals with the broader aspects of statecraft. Here the author has presented the philosophy which he advocates as the foundation for government regulation. The functions of government and business overlap and are interdependent. Centralized economic power means centralized political power. An excess of one and its remedy must be reflected in the other. Political decentralization waits on economic decentralization. The preservation of private property, the establishment of political and economic justice,

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liberty, equality, and private initiative present conflicting forces, many of which are destructive. If these functions and rights are to be fulfilled and preserved, respectively, statecraft must be based on a comprehension of all of them. Statecraft, or in the higher sense "politics," thus has as one of its tasks the harmonizing of economic and political forces. This must be done, not by allowing business organizations to take over the functions of government, but by maintaining in the background a possibility, if not the actuality, of government regulation, thereby forcing business to solve its own problems and observe the principles of social welfare or submit to government intervention.

No one but a political scientist widely read in economic lore and in the current literature of business could have contributed this remarkable survey. It is replete with allusions not only to political principles and philosophy but to the latest data on the details of business activity. Dr. Crecraft has described so lucidly and succinctly that the reader sees in a bird's eye view a vast field arranged in due perspective and proportion. In the maze of detail there is always a guiding thread of continuity.

JAMES T. YOUNG.

University of Pennsylvania.

Communism. By HAROLD J. LASKI. (New York: Henry Holt and Company. 1927. Pp. 254.)

Industry and Politics. By SIR ALFRED MOND. (London: The Macmillan Company. 1927. Pp. 337.)

The Breakdown of Socialism. By ARTHUR SHADWELL. (Boston: Little, Brown and Company. 1927. Pp. 272.)

Mr. Laski traces in this little volume the evolution of the thought and practice of modern communism. The theory of communism is declared to be an amalgam of three main facets of thought, namely, (1) the materialistic interpretation of history, which declares that the activities and ideologies of groups are determined by what is to their economic advantage. The communists draw from this the moral that no dominant economic class ever voluntarily cedes its power merely because of general ideas of justice and humanitarianism. Militant action by the proletariat is therefore held necessary to protect its interests. As faithful followers of the Hegelianism of Marx, they moreover believe that the processes of production, by crushing

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out the middle class, are inevitably swelling the ranks of the proletariat and separating society into two sharply defined classes. The alleged growing ranks of the industrial reserve army, the increasing severity of business crises, and the supposed lowering of real wages are all relied upon to drive the working classes on to a final and triumphant revolt.

(2) The Marxian theory of value, which makes value consist only of units of labor as they are embodied in commodities. Since fewer units of labor are needed to maintain the workers than they give forth in production, the difference, in surplus-value, is absorbed by the capitalists as a toll upon the workers. Mr. Laski touches briefly upon the great contradiction in Marxian theory which arises from the fact that since constant capital is supposed merely to embody past labor, it cannot in the Marxian system make any further contribution to value. This leads to the patently absurd conclusion that profits are derived solely from variable capital, and that the greater the proportion of variable capital in an industry the higher will be the average rate of interest. But the author does not adequately point out how in Marx's mind the theory of the inevitability of the final cataclysm which was to devour capitalism was but the logical derivative of his theory of value.

(3) The third element is the communistic theory of the state. In a society where surplus income and the direction of industry are narrowly concentrated, the capitalists, through their control over the agencies of propaganda and over men's jobs, are said to be able to prevent socialism from being attained through the means of political democracy. Even were the workers ultimately to be victorious at the polls, the capitalists, it is held, would refuse to obey the popular mandate, and would instead organize a fascist movement to protect their property by force. The communists believe, therefore, that the issue must ultimately be decided by arms, and they regard with scorn the social pacifism of such socialistic leaders as Kautsky and MacDonald. Once in power, the communists believe that they can use the state as an agency to repress and intimidate the bourgeoisie from again attaining power and to socialize industry.

Several slips in the jaunty air of omniscience should perhaps be noted. Thus the Stockholm Conference was projected by the Social Democrats *before* the Bolshevist revolution of October, 1917, and not afterwards, as the author (pp. 43–44) implies. In his anxiety to score against the communists, Mr. Laski grossly exaggerates the restora-

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tion of private enterprise which has developed under the Soviet government. Instead of private trading being "restored upon something approaching its pre-war scale" (p. 48), the truth of the matter is that it comprised in 1926–27 but ten per cent of wholesale trade and only thirty per cent of the retail turnover. The statement that the large industries "resemble in their working and relation to the state nothing so much as the railway companies of England and America" is a ludicrous misrendering of reality. Such companies in the English-speaking world are not owned by the state, as is the case with 94 per cent of Russian factory production and all the public utilities. Nor is the state controlled by the militant workers as there. Nor do the trade-unions in England and America exercise any large fraction of the influence which the Russian unions wield over labor protection and industrial production.

The two remaining books are by advocates of individualism who believe that socialism has been disproved by post-war experience. Dr. Shadwell, however, seems to have under-estimated the value of the housing projects of the Viennese socialists. Sir Alfred Mond's volume gives an insight into the considerations which are leading many British Liberals to desert their party for Conservatism in order to head off socialism.

PAUL H. DOUGLAS.

University of Chicago.

Political Pluralism: A Study in Modern Political Theory. By KUNG CHUAN HSIAO. (New York: Harcourt, Brace and Company. 1927. Pp. viii, 271.)

Dr. Hsiao's book is valuable more for the thoroughness of the test both of logic and of practice to which he has submitted the doctrine of political pluralism than for the novelty of the conclusions he has reached. Until the appearance of his study, there existed, to the reviewer's knowledge, no such comprehensive investigation of this most conspicuous, if not altogether most significant, development of modern political thought, and there was room therefore for a volume devoted entirely to it. Dr. Hsiao's conclusions furnish strong support to those who, while acknowledging the (in some respects) very great contributions that the pluralistic theory has made to political thinking, still fail to find in it the essential pluralism claimed for it, and therefore the annihilation of the traditional doctrine of state sovereignty. Dr. Hsiao finds among pluralistic writers, moreover, the same confusions

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of thought that have been pointed out by other critics, the same misjudgment of the older writers in attributing to them the claim for the state of "immunity from the moral law" and "omnipotence over all the relations and activities of men," and the same failure to differentiate the strictly legal from other phenomena, moral or religious, social or political.

Implicit in his comments in these earlier chapters, and set forth in greater detail in the last chapter of the book, is his own contribution —his conception of the state, that is, as an "ethical ideal." In opposition, on the one hand, to what he calls the "abstract monism" of the traditional theory, especially as formulated by the analytical jurists, and on the other, to what he finds to be the falsely named and therefore "abstract" pluralism of the recent critics of the traditional theory, he offers his doctrine of "concrete monism." According to this, the state is "the highest [and] the most inclusive of all social institutions" (p. 210); "the representation of the highest possible realization of man in his social capacity" (pp. 142–3); "the complete unity of the social whole" (p. 144). And sovereignty is, accordingly, "ultimate power" (p. 139), it is true, but ultimate power, if I understand him rightly, not in the form of power as such (Dr. Hsiao would seem to repudiate any necessary connection between force and sovereignty), but of an enlightened and a truly "free" general will. "Real sovereignty," he declares, "must surely be much wider, more profound, and more satisfying than the oppressive 'Mortal God' of the Leviathan or the jejune 'human superior' of the jurisprudence" (p. 239). "The Commonwealth resulting from the successful coördination of all social forces will ultimately be a comprehensive, all-satisfying unity . . . . a community with splendor and sovereign force greater than any commonwealth that has ever been sustained by men" (p. 257).

The book is marked by close thinking and sustained reasoning throughout, and by a gratifying impartiality. The contributions that the pluralists have made to political thinking are clearly set forth and acknowledged. Indeed, Dr. Hsiao finds in the ultimate unity he perceives in their systems the key-note in many ways to his own point of view. To the reviewer, however, in his attempt to broaden the political concept and to give it concrete reality, he tends to go too far to the other extreme and to slip from the abstract legal conception immediately over to the social and the ethical, leaving one wondering what, after all, his definition of state and of sovereignty, as they actually exist, would be.

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The appendices are useful and interesting, and the bibliography extensive and well arranged. An index would, however, have been a valuable addition, and it is believed that the reading of the book would also have been facilitated and the argument made to flow more consecutively by the placing of Chapter VII immediately after Chapter V, as part of the discussion of the various phases of pluralistic thinking, before the general estimate of the theory should have been attempted. In the interest of strict accuracy, if nothing more, attention should perhaps be called, in closing, to a slight error in the first footnote on page 115, arising no doubt from the presumption, even in this twentieth century, that politics and things political are necessarily of the masculine gender.

ELLEN DEBORAH ELLIS.

Mount Holyoke College.

Société des Nations et Problème de la Paix. By MIROSLAS GONSIOROWSKI. (Paris: Rousseau. 1927. Two volumes. Pp. 508, 547.)

In these two volumes Dr. Gonsiorowski provides a comprehensive discussion of the problem of world peace as envisaged chiefly from the point of view of the League of Nations. He begins with a discussion of the social value of war and a study of the place of the individual in the state and of both in the international community, under the principles and rules of international law. There is little here to surprise the student who is familiar with current thought on these problems, although the reader has at all times a sense that the author is not merely repeating accepted views without reflection, and that he is alert and critical of many of those views without being disposed to reject them for more radical conclusions.

There follows an extended study of international organization in the political and judicial spheres. Here the author examines "the idea of international organization in the past" as a preface to a study of "international organization according to the Covenant of the League of Nations." To the latter study is added an examination of League administration in the Saar and at Danzig and a rather full treatment of the evolution of international judicial organization and practice as culminating in the Permanent Court of International Justice. To the reviewer it seems that here, as elsewhere, there is too much preoccupation with the League, or rather with the theory of the League, and too little attention to general international organization and action and to actual League activities, such as the conferences and adminis-

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trative activities of the Secretariat. At one point (I, 137) there occurs an unduly flattering picture of the Pan-American Union.

In his second volume the author discusses certain preliminary guarantees of peace, given by League members, in regard to minorities, mandates, social and economic relations, armaments, treaties, and security. He completes the work with a searching discussion of the problem of pacific settlement of international disputes. And here there is much more of piercing and realistic consideration of the actual situation. There is still too much legal theory, in the judgment of the reviewer, and too much formal logical analysis. It may be true (II, 424) that the development of the League will culminate in the provision of effective sanctions for every case of violation of legal obligations by members. But this may be a long way in the future.

In short, we have an ideological treatment of the League and the problem of peace which is often suggestive, never heretical, and always confident (*"les voies de l'évolution de l'humanité mènent fatalement à la paix du monde"*, II, 525). There is some lack of familiarity with American studies of these problems; and there is altogether too little of a sense of realism and relativism.

PITMAN B. POTTER.

University of Wisconsin.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

The presidential year has given an impetus to the publication of a number of books dealing with possible candidates, national questions, former presidents, and earlier campaigns. *American Presidents*, by Thomas F. Moran (Crowell, pp. xii, 318), contains brief sketches of the presidents from Washington to Coolidge and closes with an account of some of the "great men" who have not been chosen as presidents, such as Hamilton, Clay, Webster, John Hay, and Elihu Root, and with an interesting chapter on "the ethics of the presidential campaign." *Presidential Years, 1787–1860*, by Meade Minnegerode (Putnam, pp. viii, 396), is a colorful and extremely readable story of the elections of 1789, 1796, 1800, 1824, and 1828, and of the campaigns from 1840 to 1860 inclusive. *As I Knew Them: Presidents and Politics from Grant to Coolidge* (Harper, pp. 571), by Henry L. Stoddard, editor and publisher of the New York *Evening Mail*, is not just "another" book of political gossip. It is rather a political history of

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the United States since the days of Reconstruction, written by one who not only knew personally the actors in the drama and who was near to the center of the stage, but who also interprets the actions of the various leaders in a fair-minded manner and measures their influence on American government. The book is packed full of illustrative material useful for teachers of American government. *Drifting Sands of Party Politics*, by Oscar W. Underwood (Century, pp. viii, 422), is in large measure an analysis of the important legislation enacted by Congress since the Spanish-American war in which the author points out the forces which have influenced such legislation and indicates the trend of federal legislation and administration. The former senator from Alabama is critical of the movement toward federal centralization at the expense of the states and of the increase in the powers of administrative boards, commissions, and bureaus at the expense of Congress. He also shows by concrete examples that legislation is influenced by propaganda and too often reflects the wishes of organized groups, blocs, and organizations rather than the desire of any large number of the people. *The Challenge: Liquor and Lawlessness versus Constitutional Government*, by William G. McAdoo (pp. x, 305), also published by the Century Company, contains the views of another prominent member of the Democratic party on government, with particular reference to prohibition enforcement. In contrast with Mr. Underwood, the author is inclined to favor a larger measure of governmental regulation and nationalism. Will Irwin's *Herbert Hoover* (Century, pp. v, 315) gives us the first complete biography of the Republican candidate for the presidency. About two-thirds of the book is devoted to an account of Mr. Hoover's services during the war and to his constructive work in the Department of Commerce. *Progressive Democracy*, edited by Henry Moskowitz (Harcourt, Brace, pp. xiii, 392), is a collection of the addresses and state papers of Alfred E. Smith, Democratic candidate for the presidency. Although intended as a campaign document, the volume has a number of articles which are of great interest to students of state government on topics such as the executive budget, pay-as-you-go versus bonds for permanent public improvements, the port authority of New York, a state housing policy, the need of county health units, executive clemency, and water-power policy.

The third volume of the *Correspondence of Andrew Jackson* (Carnegie Institution of Washington, pp. xxxiv, 464) covers the years

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1820 to 1828. Both the editing and the mechanical execution maintain the high standards set by the two earlier volumes, and the text increases in interest for the political scientist with the presidential campaigns of 1824 and 1828. Jackson's development from a hot-headed, outspoken soldier into a wary master of political strategy gives unity to the volume. Of the campaign of 1824, one may well ask (p. viii), "How did it happen that a man who ran amuck in so many of his other affairs was carried through this most complicated of all without a flaw in his conduct of it?" Before his lamented death on January 27, the editor, Professor John Spencer Bassett, had completed the text and annotations for the three remaining volumes of the series.

A fifth edition of Dr. Charles A. Beard's excellent text-book, *American Government and Politics*, has been issued by the Macmillan Company (pp. x, 820). Besides bringing matters of detail down to date, two important changes have been made. The chapter on political parties has been rewritten so as to bring out the "essential continuity of American political issues from the administration of Washington to our own time," and an epilogue has been added at the end of the book dealing with the question of how citizens can best play their part in "the development of American political society." In this latter portion Dr. Beard points out the way in which the citizen who finds "the limitations of government service and political, business, and civic associations irksome" has his place in the scheme of politics as well as the politician, the officeholder, the technical employee, or the member of a party or other active organization.

A third revised edition of the well-known text-book, *Introduction to American Government*, by Frederic A. Ogg and P. Orman Ray, has been issued by the Century Company. As heretofore, the work is available in both a complete edition (pp. 1,012) and a "national edition" (pp. 673), the latter omitting the treatment of state and local government. The volume has been brought strictly down to date, the discussion of a considerable number of topics has been rewritten, and some new material has been added. There are additional charts and diagrams, and the bibliographical apparatus has been amplified.

A second edition of James Parker Hall's *Illustrative Cases on Constitutional Law* (pp. x, 586), revised and enlarged by H. C. Black, has been brought out by the West Publishing Company. The book has been brought down to date and made more useful by the addition

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of recent leading cases such as Dillon v. Gloss, Adkins v. Children's Hospital, Massachusetts v. Mellon, ex Parte Grossman, Bailey v. Drexel Furniture Company, etc. One is somewhat disappointed to find that the case of Myers v. the United States has not been included. Unlike most of the other case-books, Dean Hall's compilation contains a number of state cases, especially on such subjects as the separation of powers, state executive power, state judicial power, the police power, labor legislation, and taxation. The volume contains a total of about 160 cases.

Lectures on Legal Topics, 1922–1923 (Macmillan, pp. viii, 393) is volume four of the addresses delivered before the Bar Association of the City of New York by various authorities. While the bulk of the work contains purely legal discussions, several of the addresses fall within the realm of the general student of government. This is especially true of the three addresses by Dean Roscoe Pound on "The Theory of Judicial Decision" (74 pages); "Some Aspects of the Problem of Law Simplification," by Justice Harlan F. Stone; "The United States Supreme Court," by James M. Beck; and "Why the Right of Local Self-Government is Essential to the Preservation of Civil Liberty," by William L. Marbury.

The Report of the State Tax Commission of New York for 1926 (pp. 553) contains an interesting explanation of the reasons why the commission of that commonwealth, unlike tax authorities in some other states, opposes the abolition of the federal inheritance tax. The commission is of the opinion that without the federal tax the death taxes of the states would be jeopardized, that repeal would encourage tax dodging, that the present national law through its credit provision protects the state against unwarranted interference by other states, and that an inheritance tax should be a part of any well balanced tax system.

The New York *Sun* has published a booklet on *Facts About the Government* (pp. 134) containing well written and pithy one-page notes on the various offices, departments, bureaus, commissions, agencies, and activities of the federal government, such as the Senate, the vice-president, the speaker, congressional floor leaders, reporters of debates, the Library of Congress, air mail service, budget, federal-aid highways, tea-tasters in the bureau of chemistry, forest research laboratories, and so on.

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The Practice of Politics (pp. 36), by Raymond Moley, is a booklet published by the American Library Association providing an outline for the study of politics through the reading of such biographies as Bowers' *Jefferson and Hamilton*, Croly's *Life of Mark Hanna*, Roosevelt's *Autobiography*, etc.

The Bar Association of St. Louis has published the speeches and remarks at the testimonial dinner given Judge Walter Henry Sanborn, senior United States circuit judge, after thirty-five years of service on the bench. The book (pp. 180) throws much interesting light on the part played by a circuit judge in the development of American law and is a valuable contribution to the history of the federal judiciary.

The Bobbs-Merrill Company has published a booklet on *The Constitution of the United States: its History and Meaning*, by Richard Wasson (pp. 135), containing the text of the federal constitution with brief explanations after each article or section. The book is intended for use in high schools, especially in states which require by law the teaching of the Constitution.

The Bureau for Research in Government at the University of Minnesota has recently published *An Outline of County Government in Minnesota*, by William Anderson and Bryce E. Lehman (pp. 174); and *A System of Classification for Political Science Collections, with Special Reference to the Needs of Municipal and Governmental Research Libraries*, by William Anderson and Sophia H. Glidden (pp. 188).

The National Municipal League has issued as the second number of its Technical Pamphlet Series a fourth edition of Mr. A. E. Buck's *Administrative Consolidation in State Governments* (pp. 58), first published in 1919. The history of the subject is brought down to January, 1928.

Three recent publications of the Municipal Administration Service are: *Codification of Ordinances* (pp. 49), by E. D. Greenman; *The Administration of the Gasoline Tax in the United States* (pp. 28), by Finla G. Crawford; and *Reporting Municipal Government* (pp. 77), by Wylie Kirkpatrick.

The extension division of the University of North Carolina has published a debate handbook on *The McNary-Haugen Farm Surplus Bill* (pp. 109).

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FOREIGN AND COMPARATIVE GOVERNMENT

Students of government will find something of interest in four recent books dealing with various phases of British politics: *Empire to Commonwealth: Thirty Years of British Imperial History*, by Walter Phelps Hall (Holt, pp. xii, 526); *British Foreign Secretaries, 1807–1916: Studies in Personality and Policy*, by Algernon Cecil (Putnam, pp. xii, 378); *W. E. Gladstone*, by Osbert Burdett (Houghton Mifflin Co., pp. viii, 307); and *The Making of a Nation*, by Vincent Massey (Houghton Mifflin, pp. iv, 44). *Empire to Commonwealth* stresses constitutional history, as is evident from the arrangement of materials. After a chapter sketching the close of the Victorian era, South Africa, Australia, and Canada are successively taken up. The beginnings of imperial coördination before the war and the rôle of the Dominions during the war form the bridge to a treatment of Ireland, India, and Egypt. As the author himself admits, slight attention is given to the dependencies and the like, but on the whole the treatment is vivid and readable. A well selected bibliography increases the value of the work, which, the author says, relies mainly on the Parliamentary Debates, Dominion as well as British, and on the parliamentary or sessional papers of the House of Commons. In his work on *British Foreign Secretaries*, Mr. Cecil has succeeded admirably in setting off the personality of each of his portraits against the general background of their particular problems and policies. These essays have the luster which one is wont to expect in the paintings of great masters, and it is a great relief that amidst the mud-slinging fashion of the day, Mr. Cecil does not hesitate to declare his preference for the "quiet Scot (Lord Aberdeen), who in his political theory was so much of a scholar and in his political practice so much of a saint." The author has also put into bold relief the "discontinuity in British foreign secretaries," which leads him to the belief that the "true sequence of policy is to be found in personality and not by chronology" (p. 157). Thus Castlereagh, Canning, Aberdeen, and Palmerston, no less than the three Whig earls (Clarendon, Granville, and Rosebery), Salisbury, and Grey, are made the basis of a suggestive challenge of that often alleged continuity in British foreign policy. Mr. Burdett's biography of Gladstone is an attempt at revivifying the life of the great statesman as it lies buried in the "quarry" of Morley's monumental record. This has been done faithfully but perhaps a bit uncritically. To note one concrete example: no real understanding of the "gulf of tempera-

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ment between the odd pair"—Gladstone and Queen Victoria—can be obtained from this attempt "to fix upon the more revealing moments of action, word, and growth in Gladstone's life." The real Gladstone is as yet evasive, not unlike another great statesman and orator, Thomas Jefferson. C.D.F.

Political, social, and economic conditions in Russia are the subject of a number of recent books, including *Leninism*, by Joseph Stalin (International Publishers, pp. 472), *The Mind and Face of Bolshevism*, by René Fülöp-Miller (Knopf, pp. xv, 433), *Russian Economic Development* (since the Revolution), by Maurice Dobb (Dutton, pp. xii, 415), *Labor Protection in Soviet Russia*, by George M. Price (International Publishers, pp. 128), and *Present Day Russia*, by Ivy Lee (Macmillan, pp. viii, 206). The volume on *Leninism* by the general secretary of the Communist party of the Soviet Union is the most valuable of these various books from the point of view of the student of government. The author analyzes the writings and speeches of Lenin in order to present his theories and ideas and explains the aims, policies, strategy, methods, and results of the Communist party from the pre-revolutionary period down to the present time. Of special interest is the author's statement on the tasks of the "party as concerns the international revolutionary movement." These include "a struggle against new wars;" the extension of Russian "commerce with the foreign world on the basis of the consolidation of the state monopoly of foreign trade," the promotion of "a rapprochement to the countries that were vanquished in the imperialist war . . . . and are therefore inclined to form an opposition to the dominant group among the great powers;" and the joining of forces with the dependent and colonial countries." Fülöp-Miller's book is the best account of cultural life in Russia and of the psychological ideas underlying the economic and political developments of bolshevism which has come to the attention of the reviewer. It presents an interesting contrast to Stalin's laudatory account.

Careful in his facts on the older economy and in his figures on resources, roads, or manufactures, and cautious in his expectations of political without economic reorganization, Scott Nearing in *Whither China? An Economic Interpretation of Recent Events in the Far East* (International Publishers, pp. 225) flings discretion to the winds in estimating the speed and effects of economic-political "revolution." The old magic-working, semi-secret Red Spears are agrarian revolu-

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tionaries against brutal rural exploitation. "Labor unions" engineered by very small Communist nuclei are presented as if largely spontaneous and essentially revolutionary (*Communist International*, Easter, 1926). Modern education in China, he states, dates really from the revolution of 1911. And a writer in *Current History* is offered as sufficient authority for the statement that in two provinces embracing 50,000,000 people, "the family as an integral unit has almost disappeared." All pre-Soviet foreign influences, from the "opium wars" to the "imperial offensive" of 1925–26, are "imperialistic;" all Soviet influences are fraternal and benign—a few corroborating facts are suggested. The undertone of prophecy increases. The finale is to be Soviet China acting as business manager for Soviet Russia in erecting a Soviet Europe on the ruins of present-day capitalism. M. T. P.

The Treasury. By Sir Thomas L. Heath (G. P. Putnam's Sons, pp. iv, 238) is another of the small informative volumes on the great administrative offices of English government today, published under the collective title of *The Whitehall Series* and edited by Sir James Merchant. Although the author apologetically remarks that "the subject of the Treasury is not one that lends itself greatly to popular treatment," he is to be complimented upon the readable account which he has given of the many phases of this powerful administrative body. However, the value of this study (as well as of others in this series) would be considerably increased if it contained a carefully selected bibliography and a grouped exposition of the official documents which originate in the Treasury. A comparison between these English studies and similar ones undertaken by the Institute for Government Research in Washington shows that while the English studies are superior in form of presentation and readability, the American studies are a good deal more useful as material aids to further investigation and research.

INTERNATIONAL LAW AND RELATIONS

The subject of the World War and its aftermath continues to attract attention, as indicated by the appearance of four recent books all of which are published by Alfred A. Knopf: *Lord Grey and the World War*, by Herman Lutz (pp. 346); *The Mirage of Versailles*, by Herman Stegemann (pp. 360); *England's Holy War*, by Irene Cooper Willis (pp. xx, 398); and *Locarno: A Dispassionate View*, by Alfred Fabre-Luce (pp. viii, 209). The first two are translated from the

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German and present the point of view of the authors' country. The first is in large measure a scholarly and well-balanced answer to the memoirs of Lord Grey. The author places the responsibility for the war first on Russia, then on Austria-Hungary, Germany, France, and Britain. Mr. Stegemann reaches the conclusion that the time has come to make an end to the treaty of Versailles, since "history shows us that not Germany, but Europe *and* Germany, will be ruined in consequence of it. . . . . The history of Europe will be determined by the defeat of the treaty of Versailles and the spirit that rules it." Miss Willis' book is an indictment of the attitude and policy of the English Liberals during the war in regarding England as the "savior of mankind." Her material is drawn largely from Liberal newspapers. All four books are readable, and like the other books published by Knopf are excellent examples of the printer's art at its best.

The lectures of Sir Arthur Willert at the 1927 Williamstown Institute of Politics have been published by the Yale University Press under the title *Aspects of British Foreign Policy* (pp. 141). The most interesting chapters are those on British policy in China, especially in regard to concessions and the Russian question. Speaking of Russia, the author states: "We have no desire to interfere with its internal affairs. If Russia likes to practice communism within her borders, we shall not interfere. All we ask is that she repay us in the same coin of non-interference, that she shall keep her doctrines for domestic consumption and not export them and push them upon us by propaganda and intrigue."

The H. W. Wilson Company is to be congratulated upon the uniformly high quality of the recent volumes in its Handbook Series. In addition to the volume on China, noticed elsewhere in this number of the *Review*, these have also appeared: *Selected Articles on Interallied Debts and Revision of the Debt Settlements* (pp. xxxv, 489), compiled by James T. Gerould, librarian of the Princeton University Library, and Laura S. Turnbull, and *Selected Articles on Intervention in Latin America* (pp. lii, 295), compiled by L. T. Beman. Like the other books in the Handbook Series, each work contains an exhaustive bibliography, affirmative and negative briefs, and numerous articles and extracts from official documents on opposing sides of the questions considered.

An interesting and informing little book is William E. Walling, *The Mexican Question; Mexico and American-Mexican Relations under*

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Calles and Obregon (Robins Press, pp. 205). The first ten chapters portray Mexico under Calles, the next eleven survey the Mexican labor movement, and the last five outline recent and current aspects of Mexican-American relations. The general slant of the discussion is indicated by the conclusion that "the 'Coolidge doctrines' are nothing more nor less than the expression of the latest program of American big business and organized business generally for the use of the American government, the money of American tax-payers, and the lives of American young men in the army to advance 'the property interests' of private capital abroad" (p. 193). But the book will repay a careful reading.

Mexico Before the World (Academy Press, pp. 244) is a compilation of the important addresses and public documents of President Calles translated from the Spanish and edited by Robert H. Murray. The book has been published for the purpose of furnishing "authoritative information upon the man and his work and upon topics relevant to the present state of governmental, social, economic, and kindred conditions in Mexico."

The central theme of *Imperialism and Civilization*, by Leonard Woolf (Harcourt, Brace, pp. 182), is that the clash between the white and colored races is due, not to differences of color, but to an imperialistic policy which attempts to make the native races subservient to the whites.

The reference department of the Ohio Wesleyan University Library has issued an eighteen-page typewritten *List of References on the Protocol for the Pacific Settlement of International Disputes.*

POLITICAL THEORY AND MISCELLANEOUS

The report of a survey conducted by Professor Frederic A. Ogg for the American Council of Learned Societies is embodied in a book of 454 pages entitled *Research in the Humanistic and Social Sciences* (The Century Co., 1928.) The descriptive adjectives in the title are used in the broad sense. There is an extended treatment of the status and problems of research in American universities and colleges, and it is intimated that the ideal research unit is "from many points of view the university professor surrounded by a few students sufficiently advanced to be fruitful collaborators." The danger that research may pass from the university to the business office and extra-academic

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institutions, with the possible drying up of the sources of creative effort, is pointed out. Research is shown to have been greatly stimulated by the World War. Recently there has been a growing tendency to associate research undertakings with educational foundations. Briefly described are ten research councils in the social sciences generally; one in the field of history; twenty in economics; five in political science; seven in the municipal field; nine in sociology; sixty-three miscellaneous national and local organizations; thirty-four in private business; the numerous government bureaus and commissions; the ten major educational foundations; and the libraries, fellowships, prizes and other aids to research. A helpful bibliography and index complete a book which covers a wide range of investigation and which puts all people interested in research under obligation to Professor Ogg and to the Council of Learned Societies.

The National Institute of Public Administration: A Progress Report, by Luther Gulick (pp. 106), is the story of "the work, the failures, and the achievements of the New York Bureau of Municipal Research, of the Training School for Public Service which was affiliated with the Bureau in 1911, and of the National Institute of Public Administration into which these organizations were fused in 1921." The result is a modest, straightforward account of the part played by this pioneer bureau and its successors in applying the scientific spirit to government and in raising the level of public administration. As stated by Dr. Gulick: "The National Institute of Public Administration . . . . is dedicated to the application of science in public administration. It is led on by the belief that more progress can be brought about in government through an application of the scientific spirit, through impartial research, through the testing of ideas, and the discovery of principles of administration than through any program of political reform which mankind has yet adopted. To this end the Institute is endeavoring to bend its energies through unhampered scientific research, through non-partisan programs of practical reform, and through the training of men and women who carry into public service, research, and education these same ideas."

Elements of Political Science Research: Sources and Methods, by Austin F. Macdonald (Prentice-Hall, pp. 94), is a working manual intended for students enrolled in advanced courses. Suggestions are made in regard to methods of research and the most important source materials in the study of federal laws, state laws, local ordi-

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nances, judicial decisions, congressional debates and documents, executive and other reports, foreign legislative debates, and British parliamentary papers. In addition to an explanation of sources and methods, the author has included problems for investigation at the end of each chapter.

Outlines of Public Utility Economics, by Martin C. Glaeser (Macmillan, pp. xxvi, 847), is of as great interest to the student of state and local government as to the economist. Following several introductory chapters on the economic basis of public utility enterprises, the author devotes the second part of the book to a detailed consideration of the development of regulatory agencies, including such topics as the common-law basis of regulation, the constitutional basis of regulation, the pre-commission system of state regulation, the earlier regulation of local utilities by special franchises, the regulation of utilities by commissions, and the use of flexible rate franchises such as the sliding scale and service-at-cost plans. Part III covers the administration of public utilities under regulation and deals largely with the complicated problems of valuation, rate of return, labor policies, and taxation. The concluding part on "trends in public policies affecting utilities" is especially significant for students of government. Here the author discusses the government as a public enterprise, analyzes the results of the service-at-cost plan, and ends with a general summary and forecast for the future. Professor Glaeser points out the danger of public ownership in a community where the public is "perilously divided or opposed to the policy" and stresses the importance "that governmental administrative organs and the public finances be not overloaded with economic enterprises so that inefficiency and confusion will result." He also expresses the opinion that the "emasculation of commission regulation, by whatever methods accomplished, is to be deplored." Mr. Glaeser has given us by far the most useful work that has yet appeared on this important subject.

A History of Hindu Political Theories: From the Earliest Times to the End of the Seventeenth Century A.D., by U. N. Ghoshal (Oxford University Press, pp. xviii, 257), is well summarized in the following extract: "The state, or the political association, as conceived by the Hindu thinkers is not, as among the Greeks, a natural institution having its origin in the essential characteristics of human wants. On the contrary, all the Hindu theories relating to the origin of kingship imply that political authority which is the essence of such association arose

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either by means of popular agreement or else the agency of divine ordination, the immediate occasion for its creation being the imperious need of protecting the people from anarchy. . . . . Political authority is conceived by the Hindu thinkers . . . . to be the fundamental and the essential condition of functioning of the people's activities. This attitude leads to . . . . the tendency to subordinate morality to the interests and exigencies of the state," which "tends to become an end in itself." The reviewer is not in a position to check up on Mr. Ghoshal's analysis of Indian thought beyond comparing it with certain other secondary writers, such as Banerjee, Bandarkar, Hillebrandt, and others. But it should be pointed out that Mr. Ghoshal takes issue with these writers on several important points, his main contention being that too much has been interpreted into Indian political theory on the strictly theoretical side and that hints have been taken to mean the same as well worked out philosophical structures such as that of Thomas Hobbes. C. D. F.

Charles C. Marshall, whose letter to Governor Alfred E. Smith in the *Atlantic Monthly* attracted so much attention some months ago, has elaborated his views in a book on *The Roman Catholic Church and the Modern State* (Dodd, Mead, pp. xiv, 350). After a brief discussion of the early relations between church and state, the author examines the question in the light of current events in the United States, Italy, Mexico, and France. Especial emphasis is placed on the problem as it affects our own country. The author reaches the conclusion that the "authoritative and unusual doctrine of the Roman Church is irreconcilable with American constitutional principles," and that "a Roman Catholic solidarity, under compulsory obedience to the Pope, obstructs in moral issues that free exercise of moral consciousness in the electorate on which the constitutional order of the modern state depends." The book shows a careful consideration of sources, especially authorities acknowledged by the Church. *Catholicism and the Modern Mind*, by Winfred E. Garrison (Willett, Clark, and Colby, pp. 267), is a popular interpretation of Catholicism, including the relation between church and state, by a non-Catholic.

Politicians and Moralists of the Nineteenth Century, by Émile Faguet (Little, Brown, pp. 317), contains essays on six writers of the previous century—Stendhal, Tocqueville, Proudhon, Sainte-Beuve, Taine, and Renan—who as skeptics, positivists, or merely observers represented a reaction to the views of their predecessors such as

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Saint-Simon, Fourier, and Comte, who concentrated their thoughts "upon the idea of the restoration or creation of a spiritual force considered by them all to be necessary." The essays on Tocqueville and Proudhon are naturally of most interest to students of political philosophy. The chapter on Tocqueville is one of the best short analyses known to the reviewer.

The Cambridge University Press has brought out an edition of Thomas Hobbes's *The Elements of Law, Natural and Politic* (pp. xvii, 195), edited with a preface and critical notes by Ferdinand Tönnies. The book is made up of two treatises by Hobbes which appeared in 1650—one dealing with *Human Nature; or the Fundamental Elements of Policy*, the second, with *The Elements of Law, Moral and Politic, with discourses upon moral heads, as: of the law of nature; of oaths and covenants, of several kinds of government, with the changes and revolutions of them.* Here the reader will find the groundwork for certain ideas which were more fully developed in the *Leviathan.* Mr. Tönnies has also subjoined to the main body of the work several bits of manuscript on philosophy and optics which have never before been published and which were not hitherto known to be the work of Hobbes.

Mr. Paul W. Ward's *Sovereignty* (The Hill Bookstall, Syracuse, pp. 201) is an attempt at a compressed historical, analytical, and critical discussion of this theory. Particular attention is given to the attitude of the idealists, the pragmatists, and the internationalists.

Volume V on *Athens 478–401* B.C. and Volume VI on *Macedon 401-301* B.C. of the Cambridge Ancient History, edited by J. B. Bury, S. A. Cook, and F. E. Adcock (Macmillan, pp. xxii, 554; xxiii, 648), deal with a period fertile in material which is of great interest to students of political science. Of special importance to readers of the *Review* are E. M. Walker's chapter on "The Persian Democracy," W. S. Ferguson's on "The Oligarchic Movement in Athens" and on the "Fall of the Athenian Empire," J. B. Bury's on "Dionysius of Syracuse," W. W. Tarn's on the "Conquest of the Far East," and especially E. Barker's on "Greek Political Thought and Theory in the Fourth Century."

A careful and instructive study of modern Greece is William Miller's book of that name (pp. 351), which has been published by Scribner's in their Modern World series. Special emphasis has been placed on

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politics, and there is a chapter on the new constitution of 1927. Another book by the same author is *The Ottoman Empire and Its Successors, 1801-1927* (Cambridge, at the University Press, pp. 616), which has just appeared in a new edition.

Phillips Russell's *Benjamin Franklin* (Brentano, pp. 332) is a biography of "the first civilized American"—to use the author's sub-title. In general, the volume represents an attempt to survey the career of this many-sided man "in the light of the new psychology." But it turns out to be gossipy and somewhat ill-proportioned, making much of little things and allowing some of the greater things to slip out of their right perspective. Nevertheless, the book contains some new material and on the whole is good reading.

Introduction to Governmental Accounting (John Wiley, pp. xi, 285), by Lloyd Morey, comptroller of the University of Illinois, is intended as a text-book for students and as a manual for public officials. The author is of the opinion that in the past too much emphasis has been placed upon the similarities of governmental accounting to commercial accounting. In his opinion, "problems of governmental accounting are primarily problems of governmental administration," and "to be understood and interpreted successfully they must be studied from that viewpoint and not alone from the narrower viewpoint of accounting technique." It is with this purpose in mind that Mr. Morey has prepared his excellent treatise.

One of the recent text-books intended for third and fourth year students in high school is J. M. Mathews' *Essentials of American Government* (Ginn, pp. 419). The author attempts to steer a middle course between the old-fashioned text-book which was merely an outline of government and the newer "community civics." In its main outlines the book is planned in accordance with the recommendations of the committee of the American Political Science Association "appointed to define the scope and purposes of a high school course in civics" as published in the *Review* (Volume XVI, pp. 116-125).

American Labor Dynamics, edited by J. B. S. Hardman (Harcourt, Brace, pp. xv, 432), contains a section on labor and politics in which Abraham Epstein discusses American labor and social legislation and Seba Eldridge contributes a careful analysis of labor and independent politics. In the latter the federal system of government, checks and balances, and the lack of class consciousness are assigned

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as the most important reasons for the lack of a separate labor party. The author suggests that a survey should be made by some neutral research organization which would bring out the facts as to the relative advantages and disadvantages of a non-partisan political policy on the part of labor.

Of great interest to economists is the publication of David Ricardo's *Notes on Malthus' "Principles of Political Economy"* (Johns Hopkins Press, pp. cviii, 246.) The existence of this work has been known for nearly a century, but the manuscript was long ago given up for lost. It was recently discovered, however, and has been edited by T. E. Gregory and J. H. Hollander. The latter contributes a long evaluative introduction in which he concludes that, while the work will not change our estimates of the two great economists, it should rouse interest in Malthus' neglected treatise and increase respect for the intellectual greatness of Ricardo.

A comprehensive survey of *Equity Jurisprudence*, by Sherman Steele, has been published by Prentice-Hall (pp. 897). The book includes about three hundred cases, which are articulated by brief summaries of the leading principles.

The University of Oregon has published a comprehensive and convenient, though by no means exhaustive, *Bibliography of Censorship and Propaganda* (pp. 133), compiled by Kimball Young and Raymond D. Lawrence. Short annotations are included on many items.

Big Matt, by Brand Whitlock (Appleton, pp. 284), is a story of state politics featuring a governor and an old-time political boss to whom the governor owes his success. Written by one who is familiar with American politics, the book, in spite of the fact that it is fiction, has some value for the student of government.

The A B C of Prohibition, by Fabian Franklin (Harcourt, Brace, pp. 150), is an attack upon the Eighteenth Amendment written in popular style and with a decided bias.

The most recent addition to the Century Historical Series is a well written, readable, and carefully arranged *Economic and Social History of the Middle Ages* by James Westfall Thompson, of the University of Chicago (Century, pp. ix, 900).

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RECENT PUBLICATIONS OF POLITICAL INTEREST
BOOKS AND PERIODICALS

CLARENCE A. BERDAHL
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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